R25. Administrative Services, Finance.
R25-5. Payment of Per Diem to Boards.
R25-5-1. Purpose.

The purpose of this rule is to establish the procedures for payment of per diem to policy boards, advisory boards, councils, or committees within state government.

R25-5-2. Authority.

This rule is established pursuant to Section 63A-3-106, which authorizes the Director of Finance to establish per diem rates.

R25-5-3. Definitions.

(1) "Boards" means policy boards, advisory boards, councils, or committees within state government.

(2) "Finance" means the Division of Finance.

(3) "Per diem" means an allowance paid daily.

(4) "Rate" means an amount of money.

R25-5-4. Rates.

(1) Each member of a board within state government shall receive $60 per diem for each official meeting attended that lasts up to four hours and $90 per diem for each official meeting that is longer than four hours.

(2) Travel expenses shall also be paid to board members in accordance with Rule R25-7.

(3) Members may decline to receive per diem and/or travel expenses for their services.

R25-5-5. Rates for State Employees.

(1) Full-time state employees serving on boards may not be eligible for per diem at board meetings held during normal working hours. State employee board members attending meetings held at a time other than normal working hours shall be compensated in accordance with the state overtime rules for actual hours worked.

(2) Travel expenses shall also be paid to state employees serving on boards in accordance with Rule R25-7.

R25-5-6. Payment of Per Diem.

(1) Board members are paid their per diem through the temporary payroll system in order to calculate and withhold the appropriate taxes.

(2) State employee board members are paid through the regular payroll system.

KEY: per diem allowance, rates, state employees, boards*
June 3, 1996 63A-3-106
Notice of Continuation October 30, 1998

R25. Administrative Services, Finance.
R25-7. Travel-Related Reimbursements for State Employees.
R25-7-1. Purpose.

The purpose of this rule is to establish procedures to be followed by departments to pay travel-related reimbursements to state employees.

R25-7-2. Authority and Exemptions.

This rule is established pursuant to Section 63A-3-107, which authorizes the Division of Finance to adopt rules covering in-state and out-of state travel.

R25-7-3. Definitions.

(1) "Agency" means any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of state government.

(2) "Boards" means policy boards, advisory boards, councils, or committees within state government.

(3) "Department" means all executive departments of state government.

(4) "Finance" means the Division of Finance.

(5) "Per diem" means an allowance paid daily.

(6) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."

(7) "Rate" means an amount of money.

(8) "Reimbursement" means money paid to compensate an employee for money spent.

(9) "State employee" means any person who is paid on the state payroll system.

R25-7-4. Eligible Expenses.

(1) Reimbursements are intended to cover all normal areas of expense.

(2) Requests for reimbursement must be accompanied by original receipts for all expenses except those for which flat allowance amounts are established.

R25-7-5. Approvals.

(1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.

(2) Both in-state and out-of-state travel must be approved by the department head or designee.

(3) Exceptions to the prior approval for out-of -state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, or on an attachment, and must be approved by the Department Director or the designee.

(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

R25-7-6. Reimbursement for Meals.

(1) State employees who travel on state business may be eligible for a meal reimbursement.

(2) The reimbursement will include tax, tips, and other expenses associated with the meal.

(3) Allowances for in-state travel differ from those for out-of-state travel.

(a) The daily travel meal allowance for in-state travel is $26.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	$5.00
Lunch	$7.00
Dinner	$14.00
Total	$26.00

(b) The daily travel meal allowance for out-of-state travel is $34.00 and is computed according to the rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	$8.00
Lunch	$9.00
Dinner	$17.00
Total	$34.00

(4) When traveling to premium cities (New York, Los Angeles, Chicago, San Francisco, Washington DC, Boston, and Atlanta), the traveler may choose to accept the per diem rate for out-of state travel or to be reimbursed at the actual meal cost, with original receipts, up to $50 per day.

(a) The traveler must be entitled to all meals for the day in order to qualify for premium rates for a given day.

(b) The traveler must use the same method of reimbursement for an entire day.

(c) Actual meal cost includes tips.

(d) Alcoholic beverages are not reimbursable.

(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the reasonable, actual meal cost, with original receipts.

(a) The traveler may combine the reimbursement methods during a trip; however, he must use the same method of reimbursement for an entire day.

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

(6) The meal reimbursement calculation is comprised of three parts:

(a) The day the travel begins. The traveler's entitlement is determined by the time of day he leaves his home base (the location the employee leaves from and/or returns to), as illustrated in the following table.

TABLE 3

The Day Travel Begins

1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
a.m.	a.m.	p.m.	p.m.
12:01-6:00	6:01-noon	12:01-6:00	6:01-midnight
*B, L, D	*L, D	*D	*no meals

In-State			
$26.00	$21.00	$14.00	$0
Out-of-State			
$34.00	26.00	$17.00	$0

*B=Breakfast, L=Lunch, D=Dinner

(b) The days at the location.

(i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance.

(ii) Meals provided on airlines will not reduce the meal allowance.

(c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day he returns to his home base, as illustrated in the following table.

TABLE 4

The Day Travel Ends

1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
a.m.	a.m.	p.m.	p.m.
12:01-6:00	6:01-noon	12:01-7:00	7:01-midnight
*no meals	*B	*B, L	*B, L, D
In-State			
$0	$5.00	$12.00	$26.00
Out-of-State			
$0	$8.00	$17.00	$34.00

*B=Breakfast, L=Lunch, D=Dinner

(7) An employee is also entitled to meals when his destination is at least 100 miles from his home base and he does not stay overnight.

(a) Breakfast is paid when the employee leaves his home base before 6:01 a.m.

(b) Lunch is paid when the trip meets one of the following requirements:

(i) The employee is on an officially approved trip that warrants entitlement to breakfast and dinner.

(ii) The employee leaves his home base before 10 a.m. and returns after 2 p.m.

(iii) The department director provides prior written approval based on circumstances.

(c) Dinner is paid when the employee leaves his home base and returns after 7 p.m.

R25-7-7. Meal Per Diem for Statutory Non-Salaried State Boards.

(1) When a board meets and conducts business activities during mealtime, the cost of meals may be charged as public expense.

(2) Where salaried employees of the State of Utah or other advisors or consultants must, of necessity, attend such a meeting in order to permit the board to carry on its business, the meals of such employees, advisors, or consultants may also be paid. In determining whether or not the presence of such employees, advisors, or consultants is necessary, the boards are requested to restrict the attendance of such employees, advisors, or consultants to those absolutely necessary at such mealtime meetings.

R25-7-8. Reimbursement for Lodging.

State employees who travel on state business may be eligible for a lodging reimbursement.

(1) Lodging is reimbursed for single occupancy only.

(2) For non-conference hotel in-state travel, where the department/traveler makes reservations through the State Travel Agency, the state will reimburse the actual cost up to $55 per night plus tax except in Moab, metropolitan Salt Lake City (Draper to Centerville), Ogden city, and Provo/Orem city. In these areas, the rates are:

(a) Moab - $65 per night plus tax

(b) Metropolitan Salt Lake City (Draper to Centerville) - $68 per night plus tax

(c) Ogden city and Provo/Orem city - $63 per night plus tax

(3) The state will reimburse the actual cost per night plus tax for out-of-state travel where the department/traveler makes reservations through the State Travel Agency.

(4) The same rates apply for in-state travel for stays at a non-conference hotel where the department/traveler makes their own reservations.

(5) For out-of-state travel, the state will reimburse the actual cost up to $65 per night plus tax.

(6) Exceptions will be allowed for unusual circumstances when approved in writing by the Department Director or designee prior to the trip.

(a) For out-of state travel, the approval may be on the form FI 5.

(b) Attach the written approval to the Travel Reimbursement Request, form FI 51A or FI 51.

(7) For stays at a conference hotel, the state will reimburse the actual cost plus tax for both in-state and out-of-state travel. The traveler must include the conference registration brochure with the Travel Reimbursement Request, form FI 51A or FI 51.

(8) A proper receipt for lodging accommodations must accompany each request for reimbursement.

(a) The tissue copy of the MasterCard Corporate charge receipt is not acceptable.

(b) A proper receipt is a copy of the registration form generally used by motels and hotels which includes the following information: name of motel/hotel, street address, town and state, telephone number, current date, name of person/persons staying at the motel/hotel, date of occupancy, amount and date paid, signature of agent, number in the party, and single or double occupancy.

(9) Travelers may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel.

(a) With proof of staying overnight away from home on approved state business, the traveler will be reimbursed the following:

(i) $20 per night with no receipts required or

(ii) Actual cost up to $30 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

(10) Travelers who are on assignment away from their home base for longer than 90 days will be reimbursed as follows:

(a) First 30 days - follow regular rules for lodging and meals. Lodging receipt is required.

(b) After 30 days - $46 per day for lodging and meals. No receipt is required.

R25-7-9. Reimbursement for Incidentals.

State employees who travel on state business may be eligible for a reimbursement for incidental expenses.

(1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips.

(a) Tips for maid service, doormen, and meals are not reimbursable.

(b) No other gratuities will be reimbursed.

(c) Include an original receipt for each individual incidental item above $20.00.

(2) The state will reimburse incidental ground transportation and parking expenses.

(a) Travelers shall document all official business use of taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.

(b) Personal use of such transportation to restaurants is not reimbursable.

(c) Parking at the Salt Lake City airport will be reimbursed at a maximum of the airport long-term parking rate with a receipt.

(3) Registration should be paid in advance on a state warrant.

(a) A copy of the approved FI 5 form must be included with the Payment Voucher for out-of-state registrations.

(b) If a traveler must pay the registration when he arrives, the agency is expected to process a Payment Voucher and have the traveler take the state warrant with him.

(4) Telephone calls related to state business are reimbursed at the actual cost.

(a) The traveler shall list the amount of these calls separately on the Travel Reimbursement Request, form FI 51A or FI 51.

(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls made during stays of five nights or more.

(5) Allowances for personal telephone calls made while out of town on state business overnight will be based on the number of nights away from home.

(a) Four nights or less - actual amount up to $2.50 per night (documentation is not required for personal phone calls made during stays of four nights or less)

(b) Five to eleven nights - actual amount up to $20.00

(c) Twelve nights to thirty nights - actual amount up to $30.00

(d) More than thirty days - start over

(6) Actual laundry expenses up to $18.00 per week will be allowed for trips longer than seven days, beginning after the seventh night out.

(a) The traveler must provide receipts for the laundry expense.

(b) For use of coin-operated laundry facilities, the traveler must provide a list of dates, locations, and amounts.

(7) An amount of $5 per day will be allowed for travelers away in excess of six consecutive nights.

(a) This amount covers miscellaneous incidentals not covered in this rule.

(b) This allowance is not available for travelers going to conferences.

R25-7-10. Reimbursement for Transportation.

State employees who travel on state business may be eligible for a transportation reimbursement.

(1) Air transportation is limited to Air Coach or Excursion class.

(a) All reservations (in-state and out-of-state) should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.

(b) Only one change fee per trip will be reimbursed.

(c) The explanation for the change and any other exception to this rule must be given and approved by the Department Director or designee.

(d) In order to preserve insurance coverage, travelers must fly on tickets in their names only.

(2) Travelers may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.

(a) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A or FI 51.

(b) Travelers may be reimbursed for mileage to and from the airport to allow someone to drop them off and to pick them up.

(3) Travelers may use private vehicles with prior approval from the Department Director or designee.

(a) Only one person in a vehicle may receive the reimbursement, regardless of the number of people in the vehicle.

(b) Reimbursement for private vehicle use is reimbursed at the rate of 31 cents per mile.

(c) Exceptions must be approved in writing by the Director of Finance.

(d) Mileage will be computed from the latest official state road map and will be limited to the most economical, usually traveled routes.

(e) The mileage rate is all-inclusive, and additional expenses such as parking and storage will not be allowed unless approved in writing by the Department Director.

(f) An approved Private Vehicle Usage Report, form FI 40, should be included with the department's payroll documentation reporting miles driven on state business during the payroll period.

(g) Departments may allow mileage reimbursement on an approved Travel Reimbursement Request, form FI 51A or FI 51, if other costs associated with the trip are to be reimbursed at the same time.

(4) A traveler may choose to drive instead of flying if approved by the Department Director.

(a) If the traveler drives a state-owned vehicle, allowable reimbursement will include allowable expenses for the same period of time that would have occurred had the employee flown, plus incidental expenses such as toll fees and parking fees.

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the approved mileage rate or the airplane fare, whichever is less, unless otherwise approved by the Department Director.

(i) The airline ticket cost in effect between 15 and 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.

(ii) An itinerary printout which is available through the State Travel Office is required when the traveler is taking a private vehicle.

(c) The traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.

(d) These reimbursements are all-inclusive, and additional expenses such as parking and toll fees will not be allowed unless approved in writing by the Department Director.

(e) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of the trip driving was less than or equal to the total cost of the trip flying.

(f) If the travel time taken for driving during the employee's normal work week is greater than that which would have occurred had the employee flown, the excess time used will be taken as annual leave and deducted on the Time and Attendance System.

(5) Use of rental vehicles must be approved in writing in advance by the Department Director.

(a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for reimbursement and approved by the Department Director.

(b) Detailed explanation is required if a rental vehicle is requested for a traveler staying at a conference hotel.

(c) When making rental car arrangements through the State Travel Agency, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.

(i) State employees should rent vehicles to be used for state business in their own names, using the state contract so they will have full coverage under the state's liability insurance.

(ii) Rental vehicle reservations not made through the travel agency must be approved in advance by the Department Director.

(iii) The traveler will be reimbursed the actual rate charged by the rental agency.

(iv) The traveler must have approval for a rental car in order to be reimbursed for rental car parking.

(6) Travel by private airplane must be approved in advance by the Department Director or designee.

(a) The pilot must certify to the Department Director that he is certified to fly the plane being used for state business.

(b) If the plane is owned by the pilot/employee, he must certify the existence of at least $500,000 of liability insurance coverage.

(c) If the plane is a rental, the pilot must provide written certification from the rental agency that his insurance covers the traveler and the state as insured. The insurance must be adequate to cover any physical damage to the plane and at least $500,000 for liability coverage.

(d) Reimbursement will be made at 50 cents per mile.

(e) Mileage calculation is based on road mileage computed from the latest official state road map and is limited to the most economical, usually-traveled route.

(f) An employee may be reimbursed for rental of the aircraft and purchase of gasoline and oil instead of the amount per mile, with prior approval from the Department Director, when it is cost effective for the state.

(7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 16 cents per mile.

(8) A car allowance may be allowed in lieu of mileage reimbursement in certain cases. Prior written approval from the Department Director, the Department of Administrative Services, and the Governor is required.

KEY: air travel, per diem allowance, state employees, transportation

December 29, 1998 63A-3-107

Notice of Continuation October 30, 1998 63A-3-106

R25. Administrative Services, Finance.
R25-8. Meal Allowance.
R25-8-1. Purpose.

The purpose of this rule is to establish procedures to be followed by departments to pay meal allowances to state employees required to work in excess of regularly scheduled hours during a 24-hour period.

R25-8-2. Authority.

This rule is established pursuant to Subsection 63A-3-103(1), which authorizes the Division of Finance to define fiscal procedures relating to approval and allocation of funds.

R25-8-3. Definitions.

(1) "Meal allowance" means a sum of money given to state employees to pay for meals which may be authorized when work hours are in excess of regularly scheduled hours during a 24-hour period.

(2) "Department" means all executive departments of state government.

(3) "Finance" means the Division of Finance.

(4) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."

(5) "Rate" means an amount of money.

(6) "State employee" means any person who is paid on the state payroll system.

R25-8-4. Allowance.

(1) A state employee required to work in excess of regularly scheduled hours may be authorized by his department to receive a nontaxable meal allowance up to $7 during a 24-hour period.

(a) The employee is not on travel status.

(b) The total hours worked during the 24-hour period shall be three hours or more in excess of the regularly scheduled hours.

(c) The allowance is not considered an absolute right of the employee, and is authorized at the discretion of the department head or his designee.

(d) The allowance may not be given in addition to any other meal allowance or per diem.

(e) The Employee Reimbursement/Earnings Request, form FI 48, should be completed and approved for the payment of the meal allowance.

KEY: finance, rates, state employees, allowance*
December 29, 1998 **63A-3-103**
Notice of Continuation October 30, 1998

R35. Administrative Services, Records Committee.
R35-1. State Records Committee Appeal Hearing Procedures.
R35-1-1. Scheduling Committee Meetings.

(1) The Executive Secretary shall respond in writing to the notice of appeal within 3 business days.

(2) Two weeks prior to the Committee meeting or appeal hearing the Executive Secretary shall send a notice of the meeting to at least one newspaper of general circulation within the geographic jurisdiction.

(3) One week prior to the Committee meeting or appeal hearing the Executive Secretary shall post a notice of the meeting indicating the agenda, date, time and place of the meeting at the building where the meeting is to be held and at the Utah State Archives.

R35-1-2. Procedures for Appeal Hearings.

(1) The meeting shall be called to order by the Committee Chair.

(2) Opening statements will be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present their opening statements before the Committee.

(3) Testimony shall be presented by the petitioner and the governmental entity. Each party shall be allowed thirty minutes to present testimony and evidence and to call witnesses.

(4) Witnesses providing testimony shall be sworn in by the Committee Chair.

(5) Questioning of the evidence presented and the witnesses by Committee members shall be permitted.

(6) The Committee may view documents in camera.

(7) Third party presentations shall be permitted. At the conclusion of the testimony presented, the Committee Chair shall ask for statements from any third party. Third party presentations shall be limited to ten minutes.

(8) Closing arguments may be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present a closing argument and make rebuttal statements.

(9) Committee deliberations.

(a) Following deliberations, a motion to grant in whole or part or to deny the petitioner's request shall be made by a member. Following discussion of the motion, the Chair shall call for the question. The motion shall serve as the basis for the Committee Decision and Order. The Committee shall vote and make public the decision of the Committee during the hearing.

(10) Adjournment.

R35-1-3. Issuing the Committee Decision and Order.

(1) The Decision and Order shall be signed by the Committee Chair and distributed by the Executive Secretary within three business days after the hearing. Copies of the Decision and Order will be distributed to the petitioner, the governmental entity and all other interested parties. The original order shall be maintained by the Executive Secretary. A copy of the order shall be made available for public access at the Utah State Archives, Research Center.

R35-1-4. Committee Minutes.

(1) All meetings of the Committee shall be recorded. Access to the audio recordings shall be provided by the Executive Secretary at the Utah State Archives, Research Center.

(2) Written minutes of the meetings and appeal hearings shall be maintained by the Executive Secretary. A copy of the approved minutes shall be made available for public access at the Utah State Archives, Research Center.

KEY: government documents, state records committee*, records appeal hearings*
March 18, 1999 63-2-502(2)(a)

R68. Agriculture and Food, Plant Industry.
R68-15. Quarantine Pertaining to Japanese Beetle, (Popillia Japonica).
R68-15-1. Authority.

A. Promulgated under authority of Subsection 4-2-2-(1)(j) and 4-2-2(1)(l)(ii).

B. Refer to the Notice of Quarantine, Japanese Beetle, (Popillia Japonica), Effective January 4, 1993, issued by Utah Department of Agriculture and Food.

R68-15-2. Pest.

Japanese beetle, Popillia japonica, a beetle, family Scarabaeidae, which in the larval state attacks the roots of many plants and as an adult attacks the leaves and fruits of many plants.

R68-15-3. Areas Under Quarantine.

A. The following states have been placed under a general quarantine to prohibit the entry of Japanese Beetle into Utah through the sale of plants and plant products: the entire states of Alabama, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia.

B. The same general quarantine shall apply to the following states in provinces of Canada:

1. In the Province of Ontario: Lincoln, Welland, and Wentworth.

2. In the Province of Quebec: Missiquoi and St. Jean.

C. Any areas not mentioned above where Japanese Beetle has been found or known to occur, shall also be placed under this same general quarantine.

R68-15-4. Articles and Commodities Under Quarantine.

A. The following are hereby declared to be hosts and possible carriers of all stages of the Japanese beetle:

1. Soil, humus, compost and manure (except when commercially packaged and treated);

2. All plants with roots (except bareroot plants free from soil).

3. Grass Sod;

4. Plant crowns or roots for propagation (except when free from soil);

5. Bulbs, corms, tubers, and rhizomes of ornamental plants (except when free from soil);

6. Any other plant, plant part, article, or means of conveyance when it is determined by a Utah State Plant Quarantine Officer to present a hazard of spreading live Japanese beetle due to infestation or exposure to infestation by Japanese beetle.

B. Packing material added to bareroot plants after harvesting would not normally pose a pest risk. Packing material would be covered under (6) above, at the inspector's discretion.

C. Free From Soil - For the purposes of this quarantine, free from soil is defined as soil in amounts that could not contain concealed Japanese beetle larvae or pupae.

R68-15-5. Restrictions.

All commodities covered are prohibited entry into Utah from the area under quarantine unless they have the required certification. Plants may be shipped from the area under quarantine into Utah provided such shipments conform to one of the options below and are accompanied by a certificate issued by an authorized state agricultural official at origin. Note that not all protocols approved in the U.S. Domestic Japanese Beetle Harmonization Plan are acceptable for Utah. Advance notification of regulated commodity shipment is required. The certificate shall bear the name and address of the shipper and receiver as well as the inspection/certificate date and the signature of state agricultural officer. The certifying official shall mail, FAX or e-mail a copy of the certificate to Director, Plant Industry Division, Utah Department of Agriculture and Food, 350 North Redwood Road, P.O. Box 146500, Salt Lake City, Utah 84114-6500, FAX: (801) 538-7189, e-mail: agmain.dwilson@state.ut.us. The shipper shall notify the receiver to hold such commodities for inspection by the Utah Department of Agriculture and Food. The receiver must notify the Utah Department of Agriculture and Food of the arrival of commodities imported under the provisions of this quarantine and must hold such commodities for inspection. Such certificates shall be issued only if the shipment conforms fully with (a), (b), (c), (d) or (e) below:

(a) Production in an Approved Japanese Beetle Free Greenhouse/Screenhouse. All the following criteria apply: All media must be sterilized and free of soil; All stock must be free of soil (bareroot) before planting into the approved medium; The potted plants must be maintained within the greenhouse/screenhouse during the entire adult flight period; During the adult flight period the greenhouse/screenhouse must be made secure so that adult Japanese beetles cannot gain entry. Security will be documented by the appropriate phytosanitary officials of the origin state department of agriculture and must be specifically approved as a secure area. They shall be inspected by the same officials for the presence of all life stages of the Japanese beetle; The plants and their growing medium must be appropriately protected from subsequent infestation while being stored, packed and shipped; Certified greenhouse/screenhouse nursery stock may not be transported into or through any infested areas unless identity is preserved and adequate safeguards are applied to prevent possible infestation; Each greenhouse/screenhouse operation must be approved by the phytosanitary officials as having met and maintained the above criteria, and issued an appropriate certificate bearing the following declaration: "The rooted plants (or crowns) were produced in an approved Japanese beetle free greenhouse or screenhouse." The certificate accompanying the shipment must have the same statement as an additional declaration.

(b) Production During a Pest Free Window. The entire rooted plant production cycle will be completed within a pest free window, in clean containers with sterilized and soilless growing medium, i.e., planting, growth, harvest, and shipment will occur outside the adult Japanese beetle flight period, June through October. The accompanying phytosanitary certificate

shall bear the following additional declaration: "These plants were produced outside the Japanese beetle flight season."

(c) Applications of Approved Regulatory Treatments. All treatments will be performed under direct supervision of a phytosanitary official of the origin state department of agriculture or under a compliance agreement thereof. Treatments and procedures under a compliance agreement will be monitored closely throughout the season. State phytosanitary certificates listing and verifying the treatment used must be forwarded to the receiving state via fax or electronic mail, as well as accompanying the shipment. Note that not all treatments approved in the U.S. Domestic Japanese Beetle Harmonization Plan are acceptable for Utah. The phytosanitary certificate shall bear the following additional declaration: " The rooted plants were treated to control "Popillia japonica" according to the criteria for shipment to category 1 states as provided in the U.S. Domestic Japanese Beetle Harmonization Plan and Utah Japanese Beetle Quarantine."

(A) Dip Treatment - B and B and Container Plants. Not approved.

(B) Drench Treatments - Container Plants Only. Not approved for ornamental grasses or sedges. Potting media used must be sterile and soilless, containers must be clean. Field potted plants are not eligible for certification using this protocol. This is a prophylactic treatment protocol targeting eggs and early first instar larvae. If the containers are exposed to a second flight season they must be retreated.

(1) Imidacloprid (Marathon 60WP). Apply one-half (0.5) gram of active ingredient per gallon as a prophylactic treatment just prior to Japanese beetle adult flight season (June 1, or as otherwise determined by the phytosanitary official). Apply tank mix as a drench to wet the entire surface of the potting media. A twenty-four (24) gallon tank mix should be enough to treat 120-140 one-gallon containers. Avoid over drenching so as not to waste active ingredient through leaching. During the adult flight season, plants must be retreated after sixteen (16) weeks if not shipped to assure adequate protection.

(2) Bifenthrin (Talstar Nursery Flowable 7.9%). Mix at the rate of twenty (20) ounces per 100 gallons of water. Apply, as a drench, approximately eight (8) ounces of tank mix per six (6) inches of container diameter.

(C) Media (Granule) Incorporation - Container Plants Only. All pesticides used for media incorporation must be mixed prior to potting and plants potted a minimum of thirty (30) days prior to shipment. Potting media used must be sterile and soilless; containers must be clean. The granules must be incorporated into the media prior to potting. Field potted plants are not eligible for treatment. This treatment protocol targets eggs and early first instar larvae and allows for certification of plants that have been exposed to only one flight season after application. If the containers are to be exposed to a second flight season they must be repotted with a granule incorporated mix or retreated using one of the approved drench treatments. Pesticides approved for media incorporation are:

(1) Imidacloprid (Marathon 1G). Mix at the rate of five (5) pounds per cubic yard.

(2) Bifenthrin (Talstar Nursery Granular or Talstar T and O Granular (0.2)). Mix at the rate of 25 ppm or one-third (0.33) of a pound per cubic yard based on a potting media bulk density of 200.

(3) Tefluthrin (Fireban 1.5 G). Mix at the rate of 25 ppm based on a potting media bulk density of 400.

(D) Methyl Bromide Fumigation. Nursery stock: methyl bromide fumigation at NAP, chamber or tarpaulin. See the California Commodity Treatment Manual for authorized schedules.

(E) Other treatment or protocol not described herein may be submitted for review and approval to the Commissioner of Utah Department of Agriculture and Food.

(d) Detection Survey for Origin Certification. Japanese Beetle Harmonization Plan protocol not approved. Alternative approved protocol: States listed in the area under quarantine may have counties that are not infested with Japanese beetle. Shipments of commodities covered may be accepted from these noninfested counties if annual surveys are made in such counties and adjacent counties and the results of such surveys are negative for Japanese beetle. In addition, the plants must be greenhouse grown or contained in media that is sterilized and free of soil and the shipping nursery must grow all their own stock from seed, unrooted cuttings or bareroot material. A list of counties so approved will be maintained by the Utah Department of Agriculture and Food. Agricultural officials from a quarantined state or province may recommend a noninfested county be placed on the approved county list by writing for such approval and stating how surveys were conducted giving the following information:

(A) Areas surveyed

(B) How survey was carried out

(C) Number of traps

(D) Results of survey

(E) History of survey

If a county was previously infested, give date of last infestation. If infestations occur in neighboring counties, approval may be denied. To be maintained on the approved list, each county must be reapproved every twelve (12) months. Shipments of commodities covered from noninfested counties will only be allowed entry into Utah if the uninfested county has been placed on the approved list prior to the arrival of the shipment in Utah. The certificate must have the following additional declaration: " The plants in this consignment were produced in (name of county), state of (name of state of origin) that is known to be free of Japanese beetle.

(e) Privately owned house plants obviously grown, or certified at the place of origin as having been grown indoors without exposure to Japanese beetle may be allowed entry into this state without meeting the requirements of section (4). Contact the Utah Department of Agriculture and Food for requirements: Director, Plant Industry Division, Utah Department of Agriculture and Food, 350 North Redwood Road, P.O. Box 146500, Salt Lake City, Utah 84114-6500, FAX: (801) 538-7189, e-mail: agmain.dwilson @state.ut.us.

R68-15-6. Disposition of Violations.

Any or all shipments or lots of quarantined articles or commodities listed in R68-15-4 above arriving in Utah in violation of this quarantine shall immediately be sent out of the state, destroyed, or treated by a method and in a manner as directed by the Commissioner of the Utah Department of

Agriculture and Food or his agent. Treatment shall be performed at the expense of the owner, or owners, or their duly authorized agent.

KEY: quarantine
March 18, 1999 4-2-2
Notice of Continuation March 5, 1998 4-35-9

R156. Commerce, Occupational and Professional Licensing.
R156-5a. Podiatric Physician Licensing Act Rules.
R156-5a-101. Title.

These rules are known as the "Podiatric Physician Licensing Act Rules".

R156-5a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 5a, as used in Title 58, Chapters 1 and 5a or these rules:

(1) "Recognized residency program" as used in Subsection 58-5a-302(5) means a residency program that is accredited by the Council on Podiatric Medical Education.

(2) "Recognized school" as used in Subsection 58-5a-306(2) means a school that is accredited by the Council on Podiatric Medical Education.

R156-5a-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 5a.

R156-5a-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-5a-302a. Qualifications for Licensure - Education Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the postgraduate training requirements for licensure in Section 58-5a-302 is defined, clarified, or established as requiring each applicant to have successfully completed at least 12 months of postgraduate training in a residency program that was accredited by the Council on Podiatric Medical Education of the American Podiatric Medical Association at the time the applicant received that training.

R156-5a-302b. Qualifications for Licensure - Examination Requirements.

In accordance with Subsection 58-1-203(2) and 58-1-301(3), the examination requirements for licensure in Section 58-5a-302 are established as follows:

(1) the National Board of Podiatric Medical Examiners examination;

(2) the Podiatric Medicine Licensing examination (PMLexis); and

(3) the Utah Podiatric law examination.

R156-5a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 5a is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-5a-304. Continuing Education.

(1) There is hereby established a continuing professional education requirement for all individuals licensed under Title 58, Chapter 5a.

(2) During each two year period commencing on September 30 of each even numbered year, a licensee shall be required to complete not less than 40 hours of qualified professional education directly related to the licensee's professional clinical practice.

(3) The required number of hours of professional education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period year preceding the date on which that individual first became licensed.

(4) Qualified professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a podiatric physician;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training, and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review; or

(f) be sponsored or approved by the following:

(i) one of the organizations listed in Subsection 58-5a-304(3); or

(ii) the American Podiatric Medical Association.

(5) Credit for professional education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) a maximum of 40 hours per two year period may be recognized for teaching in a college or university or teaching qualified professional education courses in the field of podiatry;

(c) a maximum of ten hours per two year period may be recognized for clinical readings directly related to practice as a podiatric physician.

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified professional education to demonstrate it meets the requirements under this section.

(7) A licensee who documents they are engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this section may be excused from the requirement for a period of up to three years; however, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

KEY: licensing, podiatrists, podiatric physician*
1994 58-1-106(1)
Notice of Continuation March 2, 1999 58-1-202(1)

58-5a-101

R156. Commerce, Occupational and Professional Licensing.
R156-24a. Physical Therapist Practice Act Rules.
R156-24a-101. Title.

These rules are known as the "Physical Therapist Practice Act Rules".

R156-24a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 24a, as used in Title 58, Chapters 1 and 24a or these rules:

(1) "Approved course work evaluation tool", as used in Subsection R156-24a-302a(3), means the FSBPT's June 1997 revised publication entitled "A Course Work Evaluation Tool For Persons Who Received Their Physical Therapy Education Outside the United States", which is hereby adopted and incorporated by reference.

(2) "CAPTE" means Commission on Accreditation in Physical Therapy Education.

(3) "FSBPT" means the Federation of State Licensing Boards of Physical Therapy.

(4) "Joint mobilization", as used in Subsection 58-24a-104(2)(b), means passive and active movements of the joints of a patient, including the spine, to increase the mobility of joint systems; but, does not include specific vertebral adjustment and manipulation of the articulation of the spine by those methods or techniques which are generally recognized as the classic practice of chiropractic.

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 24a, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-24a-502.

R156-24a-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 24a.

R156-24a-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-24a-302a. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsection 58-24a-109(2)(b), the accredited school of physical therapy for a physical therapist shall be accredited by CAPTE.

(2) In accordance with Subsection 58-24a-102(5), a physical therapist assistant shall complete a physical therapy assistant program accredited by CAPTE.

(3) In accordance with Section 58-1-302, an applicant who has been licensed in a foreign country whose degree was not accredited by CAPTE shall document that his education is equal to a CAPTE accredited degree by submitting to the Division a credential evaluation from the Foreign Credentialing Commission on Physical Therapy which shall use the approved course work evaluation tool. Educational deficiencies may be corrected by completing college level credits in the deficient areas or by passing the College Level Examination Program (CLEP) demonstrating proficiency in the deficient areas.

R156-24a-302b. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-24a-109(2), the examination which shall be required for each applicant for licensure, including endorsement applicants, as a physical therapist shall consist of the following:

(a) the FSBPT's National Physical Therapy Examination with a passing score of at least 600 as established by the FSBPT; and

(b) the Utah Physical Therapy Law Examination with a passing score of at least 75%.

(2) An applicant must have successfully completed all academic and associated clinical requirements before being eligible to sit for the examinations required for Utah licensure.

R156-24a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 24a is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-24a-502. Unprofessional Conduct.

Unprofessional conduct includes:

(1) violating any provision of the American Physical Therapy Association's Code of Ethics, last amended January 1997, which is hereby adopted and incorporated by reference; and

(2) not providing supervision as set forth in Section R156-24a-503.

R156-24a-503. Physical Therapist Supervisory Authority and Responsibility.

In accordance with Subsection 58-24a-502(2), the supervisory responsibilities of a physical therapist include the following:

(1) Adequate supervision requires at a minimum that a supervising physical therapist perform the following activities:

(a) designate or establish channels of written and oral communication;

(b) interpret available information concerning the individual under care;

(c) provide the initial evaluation;

(d) develop a plan of care, including short and long term goals;

(e) select and delegate appropriate tasks of the plan of care;

(f) assess competence of supportive personnel in the delegated tasks;

(g) identify and document precautions, special problems, contraindications, anticipated progress, and plans for reevaluation; and

(h) reevaluate, adjust plan care when necessary, perform final evaluation, and establish a follow-up plan.

(2) Supervision by a physical therapist of a physical therapist assistant shall include the following conditions:

(a) an initial visit shall be made by the physical therapist for evaluation of the patient and establishment of a plan of care; and

(b) supervision shall be on site by the physical therapist every sixth treatment but no longer than every 30 days from the time of the physical therapist's last evaluation or treatment.

(3) Duties delegated by a physical therapist to a physical therapist assistant may include:

(a) providing physical therapy services according to a plan of care established by the licensed physical therapist;

(b) adjusting a specific treatment procedure in accordance with changes in patient status only with prior evaluation and approval by the supervising physical therapist;

(c) responding to inquiries regarding patient status to appropriate parties within the plan of care established by a supervising physical therapist, but not interpreting data beyond the scope of his physical therapist assistant education; and

(d) referring inquires regarding patient prognosis to the supervising physical therapist.

(4) Duties delegated by a physical therapist to a physical therapist aide may include:

(a) engaging in assembly and disassembly, maintenance and transportation, preparation and all other operational activities relevant to equipment and accessories necessary for treatment; and

(b) providing only that type of elementary and direct patient care which the patient and family members could reasonably be expected to learn and perform.

(5) A physical therapist aide may not interpret referrals, perform evaluations or evaluate procedures, initiate or adjust treatment programs, assume responsibility for planning patient treatment care, perform debridement, topical medical application, or joint mobilization.

(6) Each physical therapist assistant and physical therapist aide shall clearly identify himself as a non-licensed person and shall not present or hold himself out in any way as a physical therapist.

KEY: licensing, physical therapy

March 9, 1999	**58-24a-101**
Notice of Continuation May 12, 1997	**58-1-106(1)**
	58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-37c. Utah Controlled Substance Precursor Act Rules.
R156-37c-101. Title.

These rules are known as the "Utah Controlled Substance Precursor Act Rules."

R156-37c-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 37c, as used in Title 58, Chapters 1 and 37c or these rules:

(1) "Involved officer, director, partner, proprietor, employee or manager" means an individual who has direct responsibility for the purchasing, storage, handling, disbursement, sale, shipping or disposal of controlled substance precursors.

(2) "Unusual and extraordinary regulated transaction" means:

(a) a cash transaction;

(b) a transaction of a magnitude outside of standard business conduct; or

(c) a transaction in which the distributor does not have good knowledge of the legitimate use by the purchaser of the controlled substance precursors being purchased.

R156-37c-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 37c.

R156-37c-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-37c-302a. Qualifications for Licensure - Application Requirements.

In accordance with Subsection 58-37c-8(2), an applicant shall submit a complete application on a form provided by the division which includes the following:

(1) identifying information including business legal name, physical location and mailing address, contact person for licensing purposes, organization type and identifying information, trade or business names;

(2) disclosure of nature of business;

(3) all facilities where business will be conducted;

(4) identification of all controlled substance precursors for which licensure is requested; and

(5) qualifying information concerning involved officers, directors, partners, proprietors, employees, and managers.

R156-37c-601. Routine Transactions.

In accordance with Subsection 58-37c-10(4)(a), the following are the recordkeeping and reporting requirements which shall be met by a regulated controlled substance precursor distributor and purchaser transaction.

(1) Each distributor shall submit to the division the following:

(a) all records of purchase 15 days following the end of the calendar quarter;

(b) all records of sale or transfer 15 days following the end of each calendar month; and

(c) all inventory reconciliations 15 days following the end of the calendar quarter.

(2) Each purchaser shall submit to the division the following:

(a) all records of purchase 15 days following the end of each calendar month;

(b) all records of disposition 15 days following the end of the calendar quarter; and

(c) all inventory reconciliations 15 days following the end of the calendar quarter.

R156-37c-602. Extraordinary or Unusual Regulated Transactions.

In accordance with Subsection 58-37c-10((4)(b), the following are the recordkeeping and reporting requirements which shall be met by a regulated controlled substance precursor distributor and purchaser with respect to each extraordinary or unusual regulated transaction.

(1) Each distributor shall cause records of sale or transfer to be received by the division within 72 hours after the sale or transfer.

(2) Each purchaser shall cause records of purchase to be received by the division within 72 hours after purchase.

R156-37c-603. Identification.

In accordance with Subsection 58-37c-10(4)(c), the following is the identification which shall be presented by a purchaser to a distributor and the requirements for recording that identification by the distributor prior to the sale or transfer or any controlled substance precursor in a regulated transaction.

(1) A purchaser shall present a copy of the controlled substance precursor license and a photo identification, if the purchase is to be shipped by other than a common carrier.

(2) A distributor shall record the controlled substance precursor license number and organization name along with the date of sale and material and quantity sold. This identification can be kept on file for a customer for the duration of a license period. A notarized photocopy of the license is acceptable proof of licensure. For transactions involving purchasers outside the state, no license number is required, but all other reporting is required.

R156-37c-604. Theft, Loss, or Shortage of Controlled Substance Precursor.

In accordance with Subsection 58-37c-10(4)(e), purchasers and distributors shall file a report with respect to a theft, loss, or shortage of a controlled substance precursor with the division within 72 hours of discovery of the loss or shortage using the format required for unusual transactions except in the case of minor shortages discovered during inventory which would be consistent with expected handling losses which will not be reported except in the inventory reconciliation.

KEY: licensing, controlled substances, precursor*
1994 **58-1-106(1)**
Notice of Continuation March 2, 1999 **58-1-202(1)**
58-37c-1

R156. Commerce, Occupational and Professional Licensing.
R156-50. Private Probation Provider Licensing Act Rules.
R156-50-101. Title.

These rules are known as the "Private Probation Provider Licensing Act Rules".

R156-50-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 50, as used in Title 58, Chapter 50 or these rules:

(1) "Direct supervision of staff" means that the licensee is responsible to direct and control the activities of employees, subordinates, assistants, clerks, contractors, etc., and shall review, approve and sign off on all staff duties and responsibilities. Members of staff shall not engage in those duties and functions performed exclusively by the licensee as defined under R156-50-603.

(2) "Probation agreement" means the court order which outlines the terms and conditions the probationer shall comply with during the time period of probation.

(3) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 50, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-50-502.

R156-50-103. Authority.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 50.

R156-50-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-50-302. Qualifications for Licensure - Education and Equivalent Training Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the education and equivalent training requirements for licensure in Subsection 58-50-5(1) are defined, established and defined as follows:

(1) The baccalaureate degree shall include major study in social work, sociology, psychology, counseling, law enforcement, criminal justice, corrections or other related fields.

(2) The equivalent training shall consist of four years of full-time paid employment in private probation, social work, psychology, counseling, law enforcement, criminal practice, corrections or other related fields.

R156-50-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 50 is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-50-304. Continuing Education.

(1) In accordance with Subsections 58-1-203(7) and 58-1-308(3)(b) and the continuing education requirement for renewal of licensure in Subsection 58-50-6(2), each person holding a license shall complete 40 hours of qualified continuing professional education (CPE) every two years.

(2) Those persons who become licensed during the renewal period shall be required to complete a total number of CPE hours based upon a formula of five hours of CPE for each of the remaining quarters in the renewal period.

(3) Programs will generally qualify for CPE if the program is related to probation, social work, psychology, counseling, law enforcement, criminal practice, correction or other related fields and if the program will enhance professional development.

(4) Training provided by the licensee for staff will not qualify.

(5) It is the responsibility of the licensee to obtain qualifying CPE and document the CPE on forms supplied by the Division.

(6) The Division may perform random audits to determine compliance with CPE.

R156-50-502. Unprofessional Conduct.

"Unprofessional conduct" includes the following:

(1) failing to comply with the continuing professional education requirement of Section R156-50-304;

(2) failing to comply with the operating standards required for a presentence report;

(3) failing to properly supervise the offender as set forth in the probation agreement;

(4) failing to disclose any conflict of interest relating to supervision of an offender;

(5) accepting any amount of money or gratuity from an offender other than that fee which is set forth in the probation agreement; or

(6) failing to report any violation of the probation agreement.

R156-50-601. Private Probation Services Standards - Probation Supervision.

In accordance with Subsection 58-50-9(5), the private probation services standards concerning probation supervision are established and defined as follows:

(1) The private probation provider shall perform the following minimum services for each offender who is referred by the court:

(a) conduct an initial interview/assessment with each offender and establish a plan of supervision which shall be known as the case plan;

(b) review the court ordered agreement with each offender and have the offender sign the probation agreement;

(c) review with each offender the court ordered payment contract which shall provide for the collection and distribution of fines and restitution payments, and fees for services performed by the licensee;

(d) after the initial assessment, conduct a personal interview with each offender in accordance with the case plan not less than once each month and as many additional times as necessary to determine that the offender is in compliance with the probation agreement; and

(e) submit written reports as required by the probation agreement.

(2) The private probation provider shall maintain and make available for inspection a current list of fees for services

to be charged to the offender which shall be reviewed and approved by the court.

(3) The private probation provider shall be required to report to the court within two working days any new known criminal law violations committed by the offender or report any failure to comply with the terms and conditions of the probation agreement including payment of fines, restitution and fees.

(4) The private probation provider shall notify in writing the sentencing court and the office of the prosecuting attorney not less than ten working days prior to the date of termination of any supervised probation. The notification shall include a report outlining the probationer's compliance with terms and conditions of the probation agreement including payment of any fines, restitution and fees.

R156-50-602. Private Probation Services Standards - Preparing Presentence Investigative Reports.

In accordance with Subsection 58-50-9(5), the private probation services standards concerning preparing presentence investigative reports are established and defined as follows:

(1) The private probation provider shall gather the following relevant information, if applicable:

(a) juvenile arrest and disposition records;

(b) adult arrest and disposition records;

(c) county attorney or city prosecutor file information;

(d) arresting officer's report;

(e) victim impact statement;

(f) driving history record;

(g) blood/breath alcohol content test results;

(h) treatment evaluations; and

(i) medical reports.

(2) The private probation provider shall conduct interviews with the following:

(a) the defendant;

(b) the victim, and

(c) the following when relevant and available:

(i) family;

(ii) friends;

(iii) school;

(iv) employers;

(v) military; and

(vi) past and present treatment providers.

(3) The private probation provider shall recommend restitution, when appropriate;

(4) The private probation provider shall refer to outside agencies, when appropriate, for additional evaluation;

(5) The private probation provider shall develop recommendations based upon a risk/needs assessment; and

(6) The private probation provider shall complete and submit the report to the court within not less than 24 hours prior to sentencing.

R156-50-603. Private Probation Services Standards - Duties and Responsibilities of the Private Probation Provider and Staff.

(1) In accordance with Subsection 58-50-9(5), the duties and responsibilities of the private probation provider shall include the following:

(a) review, approve and sign all reports required under this chapter or ordered by the court;

(b) conduct the initial interview/assessment with each offender;

(c) conduct at least one personal interview with each offender each month;

(d) conduct all interviews required in the preparation of the presentence report.

(2) The duties and responsibilities of the staff under direct supervision of the private probation provider include the following:

(a) assist in the gathering of information and the preparation of reports;

(b) perform other monthly interviews;

(c) contact offenders by telephone or in person to determine compliance with the case plan;

(d) collect fines, restitutions and fees for services; and

(e) other clerical duties as assigned by the licensee.

R156-50-604. Private Probation Services Standards - Distribution of Fines, Restitutions, and Service Fees.

In accordance with Subsection 58-50-9(5), private probation providers shall distribute court ordered fines and restitutions and private probation service fees which are collected by the private probation provider at least every month in equal proportions to the court, the victim, the licensee and any other parties ordered by the court until each party entitled to the monies are paid in full as determined by the court order and case plan.

KEY: licensing, probation, private probation provider*

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Notice of Continuation September 16, 1996	**58-1-106(1)**
	58-1-202(1)
	58-50-5(1)
	58-50-9(5)
	58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-63. Security Personnel Licensing Act Rules.
R156-63-101. Title.

These rules are known as the "Security Personnel Licensing Act Rules."

R156-63-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 63, as used in Title 58, Chapters 1 and 63 or these rules:

(1) "Approved basic education and training programs" as used in these rules means basic education and training that meets the standards set forth in Sections R156-63-602, R156-63-603 and R156-63-604 and that is approved by the division.

(2) "Contract security company" includes:

(a) a peace officer who engages in providing security or guard services when acting in a capacity other than as an employee of the law enforcement agency by whom he is employed, or for other than the regular salary, whether at regular pay or overtime pay, from the law enforcement agency by whom he is employed; but does not include:

(b) a company which hires as employees, individuals to provide security or guard services for the purpose of protecting tangible personal property, real property, or the life and well being of personnel employed by, or animals owned by or under the responsibility of the that company, as long as the security or guard services provided by the company do not benefit any person other than the employing company.

(3) "Employee" means an individual providing services in the security guard industry for compensation when the amount of compensation is based directly upon the security guard services provided and upon which the employer is required under law to withhold federal and state taxes, and for whom the employer is required under law to provide worker's compensation insurance coverage and pay unemployment insurance.

(4) "Immediate supervision" means the supervisor is available for immediate voice communication and can be available for in-person consultation within a reasonable period of time with an on-the-job trainee.

(5) "Officer" as used in Subsections 58-63-201(1)(a) and R156-63-302a(1)(b) means a manager, director, or administrator of a contract security company.

(6) "Qualified continuing education" as used in these rules means continuing education that meets the standards set forth in Subsection R156-63-304.

(7) "Qualifying agent" means an individual who is an officer, director, partner, proprietor or manager of a contract security company who exercises material authority in the conduct of the contract security company's business by making substantive technical and administrative decisions relating to the work performed for which a license is required under this chapter.

(8) "Supervised on-the-job training" means training of an armed or unarmed private security officer or alarm response runner, under the immediate supervision of a licensed private security officer who has been assigned to train and develop the on-the-job trainee.

(9) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 63, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-63-502.

R156-63-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 63.

R156-63-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-63-302a. Qualifications for Licensure - Application Requirements.

(1) An application for licensure as a contract security company shall be accompanied by:

(a) a certification of criminal record history for the applicant's qualifying agent issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-5-214(1)(f)(ii);

(b) two fingerprint cards for the applicant's qualifying agent, and all of the applicant's officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel;

(c) a fee established in accordance with Section 63-38-3.2 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and Bureau of Criminal Identification, Utah Department of Public Safety, for each of the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel; and

(d) a copy of the driver license or Utah identification card issued to the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel.

(2) An application for licensure as an armed private security officer or alarm response runner shall be accompanied by:

(a) a certification of criminal record history for the applicant issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-5-214(1)(f)(ii);

(b) two fingerprint cards for the applicant;

(c) a fee established in accordance with Section 63-38-3.2 equal to the cost of conducting a check of records of:

(i) the Federal Bureau of Investigation for the applicant; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety; and

(d) a copy of the driver license or Utah identification card issued to the applicant.

(3) An application for licensure as an unarmed private security officer or alarm response runner shall be accompanied by:

(a) a certification of criminal record history for the applicant issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-5-214(1)(f)(ii);

(b) two fingerprint cards for the applicant;

(c) a fee established in accordance with Section 63-38-3.2

equal to the cost of conducting a check of records of:

(i) the Federal Bureau of Investigation for the applicant; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety; and

(d) a copy of the driver license or Utah identification card issued to the applicant.

(4) An applicant for licensure as an armed private security officer, unarmed private security officer, alarm response runner, or as a qualifying agent for a contract security company by a person currently licensed under Title 58, Chapter 63, shall submit an application for change in license classification and shall be required to only document compliance with those requirements for licensure which have not been previously met in obtaining the currently held license.

R156-63-302b. Qualifications for Licensure - Basic Education and Training Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the basic education and training requirements for licensure in Section 58-63-302 are defined, clarified, or established as follows:

(1) each applicant for licensure as an armed private security officer shall successfully complete a basic education and training program approved by the division, the content of which is set forth in Section R156-63-603; and

(2) each applicant for licensure as an unarmed private security officer shall successfully complete a basic education and training program approved by the division, the content of which is set forth in Section R156-63-604.

R156-63-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the examination requirements for licensure in Section 58-63-302 are defined, clarified, or established as follows:

(1) the qualifying agent for each applicant who is a contract security company shall pass the Utah Security Personnel Law and Rules Examination; and

(2) each applicant for licensure as an armed private security officer or an unarmed private security officer shall obtain a score of at least 75% on the basic education and training final examination approved by the division and offered by each provider of basic education and training as a part of the program.

R156-63-302d. Qualification for Licensure - Liability Insurance for a Contract Security Company.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the insurance requirements for licensure as a contract security company in Subsection 58-63-302(1)(j)(i) are defined, clarified, or established as follows.

(1) An applicant shall file with the division a "Certificate of Insurance" providing liability insurance for the following exposures:

(a) general liability;

(b) assault and battery;

(c) personal injury;

(d) false arrest;

(e) libel and slander;

(f) invasion of privacy;

(g) broad form property damage;

(h) damage to property in the care, custody or control of the contract security company; and

(i) errors and omissions.

(2) Said insurance shall provide liability limits in amounts not less than $300,000 for each incident and not less than $1,000,000 total aggregate for each annual term.

(3) The insurance carrier must be an insurer which has a certificate of authority to do business in Utah, or is an authorized surplus lines insurer in Utah, or is authorized to do business under the laws of the state in which the corporate offices of foreign corporations are located.

(4) All contract security companies shall have a current insurance certificate of coverage as defined in Subsection (1) on file at all times and available for immediate inspection by the division during normal working hours.

R156-63-302e. Qualifications for Licensure - Age Requirement for Armed Private Security Officer.

An armed private security officer must be 18 years of age or older at the time of submitting an application for licensure in accordance with Subsection 76-10-509(1).

R156-63-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 63 is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-63-304. Continuing Education for Armed and Unarmed Private Security Officers as a Condition of Renewal.

(1) In accordance with Subsections 58-1-203(7) and 58-1-308(3)(b), there is created a continuing education requirement as a condition of renewal or reinstatement of licenses issued under Title 58, Chapter 63 in the classifications of armed private security officer and unarmed private security officer.

(2) Qualified continuing education for armed private security officers and unarmed private security officers shall consist of not less than eight hours of formal classroom education or practical experience in each calendar year.

(3) Continuing firearms education and training for armed private security officers shall consist of not less than eight hours during each calendar year. Firearms education and training shall comply with the provisions of Public Law 103-54, the Armored Car Industry Reciprocity Act of 1993.

(4) If a renewal period is shortened or lengthened to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.

(5) Continuing education to qualify under the provisions of Subsection (2) shall include:

(a) company operational procedures manual;

(b) applicable state laws and rules;

(c) legal powers and limitations of private security officers;
(d) observation and reporting techniques;
(e) ethics; and
(f) emergency techniques.

R156-63-305. Demonstration of Clear Criminal History for Licensees as Renewal Requirement.

(1) In accordance with Subsections 58-1-203(7) and 58-1-308(3)(b), there is created a demonstration of a clear criminal history as a condition of renewal or reinstatement of licenses issued under Title 58, Chapter 63 in the classifications of armed private security officer, unarmed private security officer, alarm response runner, and for the qualifying agent for a contract security company.

(2) Each application for renewal or reinstatement of the license of a contract security company shall be conditioned upon the licensee having obtained within 120 days prior to submission of the application for renewal or reinstatement, a clear criminal history certification from the Bureau of Criminal Identification, Utah Department of Public Safety, for the licensee's qualifying agent.

(3) Each application for renewal or reinstatement of the license of an armed private security officer, unarmed private security officer, or alarm response runner shall be conditioned upon the licensee having obtained within 120 days prior to submission of the application for renewal or reinstatement, a clear criminal history certification from the Bureau of Criminal Identification, Utah Department of Public Safety.

R156-63-306. Change of Qualifying Agent.

Within 30 days after a qualifying agent for a licensed contract security company ceases employment with the licensee, or for any other reason is not qualified to be the licensee's qualifier, the contract security company shall file with the division an application for change of qualifier on forms provided by the division, accompanied by a fee established in accordance with Section 63-38-3.2.

R156-63-307. Exemptions from Licensure.

In accordance with Subsection 58-1-307(1)(c), an applicant who has applied for licensure as an unarmed or armed private security officer or alarm response runner is exempt from licensure and may engage in practice as an unarmed or armed private security officer or alarm response runner in a supervised on-the-job training capacity, for a period of time not to exceed the earlier of 30 days or action by the division upon the application.

R156-63-502. Unprofessional Conduct.

"Unprofessional conduct" includes the following:

(1) making any statement that would reasonably cause another person to believe that a private security officer functions as a law enforcement officer or other official of this state or any of its political subdivisions or any agency of the federal government;

(2) employment of an unarmed or armed private security office or alarm response runner by a contract security company, as an on-the-job trainee pursuant to Section R156-63-307, who has been convicted of a felony or a misdemeanor crime of moral turpitude;

(3) employment of an unarmed or armed private security officer or alarm response runner by a contract security company who fails to meet the requirements of Section R156-63-307; and

(4) a judgment on, or a judicial or prosecutorial agreement concerning a felony, or a misdemeanor involving moral turpitude, entered against an individual by a federal, state or local court, regardless of whether the court has made a finding of guilt, accepted a plea of guilty or nolo contendere by an individual, or an individual has entered into participation in a first offender, deferred adjudication or other program or arrangement where judgment of conviction is withheld.

R156-63-601. Operating Standards - Firearms.

(1) An armed private security officer shall carry only that firearm with which he has passed a firearms qualification course as defined in Section R156-63-603.

(2) Shotguns and rifles, owned and issued by the contract security company, may be used in situations where they would constitute an appropriate defense for the armed private security officer and where the officer has completed an appropriate qualification course in their use.

(3) An armed private security officer shall not carry a firearm except when acting on official duty as an employee of a contract security company, unless the licensee is otherwise qualified under the laws of the state to carry a firearm.

R156-63-602. Operating Standards - Approved Basic Education and Training Program for Armed and Unarmed Private Security Officers.

To be designated by the division as an approved basic education and training program for armed private security officers and unarmed private security officers, the following standards shall be met.

(1) There shall be a written education and training manual which includes performance objectives.

(2) The program for armed private security officers shall provide content as established in Section R156-63-603 of these rules.

(3) The program for unarmed private security officers shall provide content as established in Section R156-63-604 of these rules.

(4) All instructors providing the basic classroom instruction shall have at least three years of training and experience reasonably related to providing of security guard services.

(5) All instructors providing firearms training shall have the following qualifications:

(a) current Peace Officers Standards and Training firearms instructors certification; or

(b) current certification as a firearms instructor by the National Rifle Association, a Utah law enforcement agency, a Federal law enforcement agency, a branch of the United States military, or other qualification or certification found by the director to be equivalent.

(6) All approved basic education and training programs shall maintain training records on each individual trained including the dates of attendance at training, a copy of the instruction given, and the location of the training. These

records shall be maintained in the files of the education and training program for at least three years.

(7) In the event an approved provider of basic education and training ceases to engage in business, the provider shall establish a method approved by the division by which the records of the education and training shall continue to be available for a period of at least three years after the education and training is provided.

R156-63-603. Operating Standards - Content of Approved Basic Education and Training Program for Armed Private Security Officers.

An approved basic education and training program for armed private security officers shall have the following components:

(1) at least eight hours of basic classroom instruction to include the following:

(a) the nature and role of private security;
(b) state laws and rules applicable to private security;
(c) legal responsibilities of private security;
(d) civil and criminal considerations;
(e) situational response evaluations;
(f) ethics;
(g) use of deadly force;
(h) observation and description;
(i) report writing;
(j) witness statements;
(k) courtroom testimony;
(l) industrial accidents;
(m) civil and criminal incidents;
(n) crimes in progress;
(o) armed patrol techniques;
(p) unarmed patrol techniques;
(q) fixed post techniques;
(r) sexual harassment in the work place; and
(s) a final examination which competently examines the student in the subjects included in the approved program of education and training.

(2) at least six hours of classroom firearms instruction to include the following:

(a) the weapon and its ammunition;
(b) the use of factory loaded ammunition only;
(c) the care and cleaning of the weapon;
(d) cleaning equipment options;
(e) barrel and cylinder maintenance;
(f) no alterations of firing mechanism;
(g) weapons inspection review procedures;
(h) firearm safety on duty;
(i) firearm safety at home;
(j) firearm safety on range;
(k) ethical restraints on weapon use;
(l) legal restraints on weapon use;
(m) use of deadly force under Utah law and the provisions of Title 76, Chapter 2, Part 4 and;
(n) the instruction that armed private security officers shall not fire their weapon unless there is an eminent threat to life and at no time will the weapon be drawn as a threat or means to force compliance with any verbal directive; and

(3) at least six hours of firearms instruction on the range to include the following:

(a) demonstration of appropriate techniques of shooting;
(b) explanation of the difference between flash sight and sight picture; and
(c) a recognized practical pistol course on which the applicant achieves a minimum score of 80%.

R156-63-604. Operating Standards - Content of Approved Basic Education and Training Program for Unarmed Private Security Officers.

An approved basic education and training program for unarmed private security officers shall have the following components:

(1) at least eight hours of basic classroom instruction to include the following:

(a) the nature and role of private security;
(b) state laws and rules applicable to private security;
(c) legal responsibilities of private security;
(d) civil and criminal considerations;
(e) situational response evaluations;
(f) ethics;
(g) use of deadly force;
(h) observation and description;
(i) report writing;
(j) witness statements;
(k) courtroom testimony;
(l) industrial accidents;
(m) civil and criminal incidents;
(n) crimes in progress;
(o) unarmed patrol techniques;
(p) fixed post techniques;
(q) sexual harassment in the work place;
(r) a final examination which competently examines the student in the subjects included in the approved program of education and training.

R156-63-605. Operating Standards - Uniforms.

(1) All unarmed and armed private security officers while on duty shall wear the uniform of their contract security company employer unless assigned to work undercover.

(2) Uniforms worn by armed or unarmed private security officers shall be easily distinguished from the uniform of any public law enforcement agency.

R156-63-606. Operating Standards - Badges.

Badges may be worn under the following conditions:

(1) they do not carry the seal of the state of Utah nor have the words "State of Utah";

(2) they shall contain the word "Security" and may contain the name of the company; and

(3) the use of a star badge with any number of points on a uniform, in writing, advertising, letterhead, or other written communication is prohibited.

R156-63-607. Operating Standards - Criminal Status of Officer, Qualifying Agent, Director, Partner, Proprietor, Private Security Officer or Manager of Contract Security Companies.

In the event an officer, qualifying agent, director, partner,

proprietor, private security officer, or any management personnel having direct responsibility for managing operations of the contract security company is found guilty of a felony, or of a misdemeanor which impacts upon that individual's ability to function within the security industry, said company shall within ten days reorganize and exclude said individual from participating at any level or capacity in the management, operations, sales, ownership, or employment of that company.

R156-63-608. Operating Standards - Implying an Association with Public Law Enforcement Prohibited.

(1) No contract security company shall use any name which implies intentionally or otherwise that they are connected or associated with any public law enforcement agency.

(2) No contract security company shall permit the use of the words "special police", "special officer", "cop", or any other words of a similar nature whether used orally or appearing in writing or on any uniform, badge, or cap.

(3) No person licensed under this chapter shall use words or designations which would cause a reasonable person to believe he is associated with a public law enforcement agency.

R156-63-609. Operating Standards - Proper Identification of Private Security Officers.

All armed and unarmed private security officers shall carry a valid security license together with a Utah identification card issued by the Division of Driver License or a current Utah driver license whenever he is performing the duties of an armed or unarmed private security officer and shall exhibit said license and identification upon request.

R156-63-610. Operating Standards - Vehicles.

No contract security company or its personnel shall utilize a vehicle bearing a red or blue emergency light or containing a siren, bell, or other non-standard signaling device.

R156-63-611. Operating Standards - Operational Procedures Manual.

(1) Each contract security company shall develop and maintain an operational procedures manual which includes the following topics:

(a) detaining or arresting;
(b) restraining, detaining, and search and seizure;
(c) felony and misdemeanor definitions;
(d) observing and reporting;
(e) ingress and egress control;
(f) natural disaster preparation;
(g) alarm systems, locks, and keys;
(h) radio and telephone communications;
(i) crowd control;
(j) public relations;
(k) personal appearance and demeanor;
(l) bomb threats;
(m) fire prevention;
(n) mental illness;
(o) supervision;
(p) criminal justice system;
(q) code of ethics for private security officers; and
(r) sexual harassment in the workplace.

(2) The operations and procedures manual shall be immediately available to the division upon request.

R156-63-612. Operating Standards - Display of License.

The license issued to a contract security company shall be prominently displayed in the company's principal place of business and a copy of the license shall be displayed prominently in all branch offices.

KEY: licensing, security guards
April 1, 1999 **58-1-106(1)**
58-1-202(1)
58-63-101

R156. Commerce, Occupational and Professional Licensing.
R156-74. Certified Shorthand Reporters Licensing Act Rules.

R156-74-101. Title.

These rules shall be known as the "Certified Shorthand Reporters Licensing Act Rules."

R156-74-102. Reserved.

Reserved.

R156-74-103. Authority.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 74.

R156-74-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-307.

R156-74-303. Renewal Cycle - Procedure.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 74 is established by rule in Section 58-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-74-304. Continuing Education.

In accordance with Subsection 58-74-303(2), the standards for the continuing education requirement for renewal of a certified shorthand reporter license shall be the standards established by the National Court Reporters Association, Council of the Academy of Professional Reporters Continuing Education Program, revised October 1, 1998, which is hereby adopted and incorporated by reference.

KEY: court reporting, licensing, shorthand reporter*
March 18, 1999 **58-74-101**
58-74-303(2)
58-1-106(1)
58-1-202(1)

R251. Corrections, Administration.
R251-105. Applicant Qualifications for Employment with Department of Corrections.
R251-105-1. Authority and Purpose.

(1) This rule is authorized by Section 63-46a-3, 64-13-10, and 64-13-25.

(2) The purpose of this rule is to provide policies and procedures for the screening, testing, interviewing, and selecting of applicants for Department of Corrections employment.

R251-105-2. Definitions.

(1) "Department" means Utah Department of Corrections.

(2) "POST" means Peace Officer Standards and Training.

R251-105-3. General Requirements.

It is the policy of the Department that applicants for employment:

(1) shall, for POST-certified positions, be a citizen of the United States;

(2) shall, for POST-certified positions, be a minimum of 21 years of age;

(3) shall, as a minimum, be the holder of a high school diploma or furnish evidence of successful completion of an examination indicating an equivalent achievement;

(4) may be required to pass pre-employment tests depending on position requirements;

(5) shall be free from any physical, emotional, or mental conditions which might adversely affect performance;

(6) shall not have been convicted of a crime for which the applicant could have been imprisoned in a penitentiary of this or another state and shall not have been convicted of an offense involving dishonesty, unlawful sexual conduct, physical violence, or the unlawful use, sale or possession of a controlled substance. This rule may not apply to all positions;

(7) shall, if required, become a POST-certified officer and maintain certification through successful completion of at least 40 hours of POST training per fiscal year; and

(8) may undergo a background investigation which may include verification of personal history, employment history and criminal records check.

R251-105-4. Disqualification of Applicants.

(1) Applicants may be disqualified for failure:

(a) to meet education or experience qualifications;

(b) to appear for testing or interviews; or

(c) to meet minimum test score requirements.

(2) Applicants may be disqualified if found to be unsuitable for Department employment as indicated by a background investigation or psychological evaluation.

(3) Falsification of application is grounds for denying employment or for terminating employment if discovered after the applicant is hired.

(4) Disqualified applicants shall be notified in writing.

KEY: corrections, employment, prisons

March 29, 1999	**63-46a-3**
Notice of Continuation February 1, 1999	**64-13-10**
	64-13-25

R277. Education, Administration.
R277-413. Accreditation of Secondary Schools, Alternative or Special Purpose Schools.
R277-413-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Accreditation" means formal Board approval of a school that has met standards considered by the Board to be essential for the operation of a quality school program.

C. "State Committee" means the State Accreditation Committee, which is composed of public school principals, school district personnel, private school representatives, and USOE personnel.

D. "USOE" means the Utah State Office of Education.

E. "Accreditation Standards Annual Report (Annual Report)" means a document that explains a school's compliance with educational standards and progress provided by the school in its school improvement plan. The school improvement plan is a dynamic document that reflects changes and progress made by the school community. The Annual Report also provides definitions and criteria required by Northwest for accreditation.

F. "Northwest Association of Schools and Colleges (Northwest)" means the regional accrediting association of which Utah is a member.

G. "Secondary school" means a school encompassing grades 9-12 including public, alternative, and special purpose schools.

R277-413-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1) which directs the Board to adopt rules for school accreditation, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:

(1) specify the standards and procedures by which secondary schools shall become accredited by the Board; and

(2) allow for additional requirements, which are unique to the state of Utah to be added to the Northwest Annual Report.

R277-413-3. Accreditation Classifications; Reports.

A. The Board accepts the Northwest standards as its accreditation standards for high school accreditation.

B. The Board also requires additional specific Utah standards to satisfy its accreditation requirements.

C. A school shall complete the Annual Report prepared by Northwest and USOE.

D. A school shall have a complete school evaluation and site visit at least once every six years.

E. The USOE may require on-site visits as often as necessary when it receives notice of accreditation problems, as determined by the State Committee.

F. The school's accreditation rating is recommended by the State Committee following a review of a school's Annual Report. Final approval of the rating is determined by the Board.

G. The classification ratings for accredited schools as designated by Northwest shall be:

(1) Approved: a school is classified as "approved" when it equals or exceeds the standards approved by Northwest and the Board.

(2) Approved with comment: a school is classified as "approved with comment" when it has only minor deviations from specific standards.

(3) Advised: a school is classified as "advised" when there are deviations from one or more standard(s). Schools shall also be classified as "advised" when no observable effort has been made, by the second year, to correct deviations from a standard upon which comment was made in the previous year.

(4) Warned: a school is classified as "warned" when there are substantial deviations from one or more standard(s). A "warned" classification is usually given after a school has been "advised" and the deviation persists in the next Annual Report. A school may be "dropped" after two consecutive "warned" classifications, as recommended by the State Committee to the Board.

H. An accredited school may not be dropped to a non-accredited status without first receiving a "warned" classification. Exceptions to this procedure may be made due to discrepancies between information provided on the Annual Report and data received or by observations of the State Committee.

I. If a school disagrees with the recommendation of the State Committee, it may appeal as is outlined in Northwest policies and procedures.

J. All high schools shall submit their Annual Report to the USOE by October 15.

R277-413-4. Procedures for Evaluation and Classification.

A. The evaluation of secondary schools for the purpose of accreditation and classification is a cooperative activity in which the school, the local district, the USOE, and Northwest share major responsibilities. Basic to the operation of the program is a school's self-evaluation and implementation of a school improvement plan.

B. Middle level schools' membership in Northwest is optional, but all middle level schools will complete the accreditation process.

C. A school seeking accreditation for the first time shall submit a membership application to the USOE.

(1) Upon a visit by USOE staff verifying a school's compliance with accreditation standards, the school shall then receive initial accreditation and become a "Candidate" member.

(2) Within three years of initial accreditation, a "Candidate" school shall complete a self-evaluation utilizing the National Study of School Evaluation (NSSE) document, SCHOOL IMPROVEMENT: FOCUSING ON STUDENT PERFORMANCE available from Northwest or the USOE. Following the self-evaluation, a site visit shall take place.

(3) A visiting team assigned by USOE shall be sent to the school to review the self-evaluation materials, visit classes, and talk with staff and students.

(4) The visiting team shall present its finding in the form of a written report. The report shall be sent to the school, district superintendent, and USOE.

(5) The USOE staff shall review the visiting team report with the State Committee and Northwest and recommend appropriate accreditation status to the Board.

(6) The Board is the final accrediting authority.

D. Continuing accreditation is subject to:

(1) receipt and review of annual reports by the State Committee;

(2) a new self-evaluation and site visit at least every six years; and

(3) satisfactory review by the State Committee, Northwest, and final approval by the Board.

R277-413-5. Accreditation Standards.

A. The following include Northwest standards and Utah-specific requirements. Each standard requires the school to answer a series of questions and provide information as directed.

B. Standard I - The Education Program

(1) Northwest requirements as provided in the Annual Report:

(a) Philosophy and Objectives;

(b) Administrative Policies and Practices;

(c) Program of Studies - Core Curriculum;

(d) Technology in the Curriculum;

(2) Utah-specific requirements which shall be satisfied and may be addressed under the Northwest standards:

(a) State Graduation and Credit Requirements (consistent with requirements of R277-700, The Elementary and Secondary School Core Curriculum and High School Graduation Requirements;

(i) Core Curriculum;

(ii) Assessment;

(iii) Statewide Testing.

(b) Length of School Day and School Year (consistent with requirements of R277-419, Pupil Accounting);

(c) Title IX, (which is incorporated by reference) Compliance;

(d) Instructional Materials (consistent with requirements of R277-408, Expenditures for Instructional Supplies Required in Utah Public Schools;

(e) Special Education (consistent with requirements of R277-750, Education Programs for Students with Disabilities;

(f) Accelerated Learning (consistent with requirements of R277-710, Accelerated Learning Programs.

C. Standard II - Student Personnel Services

(1) Northwest requirements as provided in the Annual Report:

(a) Special Services including school services and community Services;

(b) Program of Comprehensive Services (available for students including counselors, social workers, school nurses, psychologists, and psychiatrists);

(c) Personnel and Organization (ratios and services);

(d) Postsecondary Services;

(e) Student Conduct and Attendance;

(2) Utah-specific requirements which shall be satisfied and may be addressed under the Northwest standards:

(a) Comprehensive Guidance (consistent with requirements of R277-462, Comprehensive Guidance Program);

(b) Student Educational Occupational Plan (SEOP) (consistent with requirements of R277-462, Comprehensive Guidance Program and R277-911, Secondary Applied Technology Education);

(c) School Fees (consistent with requirements of R277-407, School Fees);

(d) Student Conduct and Attendance (consistent with Section 53A-11-901).

D. Standard III - School Plant and Equipment

(1) Northwest requirements as provided in the Annual Report:

(a) Adequacy;

(b) Function;

(c) Assurances;

(2) Utah-specific requirements which shall be satisfied and may be addressed under the Northwest standards:

(a) Emergency Preparedness Plan (consistent with requirements of R277-400, Emergency Preparedness Plan);

(b) Design, Construction, Operations, Sanitation, and Safety of Schools (consistent with requirements of R392-200, Design, Construction, Operation, Sanitation, and Safety of Schools).

E. Standard IV - Library Media Program

(1) Northwest requirements as provided in the Annual Report:

(a) Student Performance Objectives;

(b) Use of Center;

(c) Staffing;

(d) Facilities;

(e) Equipment;

(f) Collection and Alternative Resources such as bookmobiles.

(2) Utah-specific requirements which shall be satisfied and may be addressed under the Northwest standards:

F. Standard V - Records

(1) Northwest requirements as provided in the Annual Report:

(a) Safekeeping;

(b) Minimum Information;

(c) Handling of student records; and

(2) Utah-specific requirements which shall be satisfied and may be addressed under the Northwest standards:

(a) Student Records (consistent with requirements of Section 53A-13-301 (Utah Family Educational Rights and Privacy Act).

G. Standard VI - School Improvement (Northwest and Utah requirements):

A school shall submit pertinent information about its community support, school profile, school mission statement, school goals, and implementation of those goals.

H. Standard VII - Preparation of Personnel

(1) Northwest requirements as provided in the Annual Report:

(a) Preparation of Professional Personnel;

(b) Paraprofessional or Non-professional Personnel;

(c) Exceptions to the Standard Teacher Preparation;

(d) Professional Preparation Deficiency Report;

(e) Staff Development

(f) Excessive Turnover and Efficiency of Instruction;

(g) Incentive Programs for Teachers and Students; and

(2) Utah-specific requirements which shall be satisfied and may be addressed under the Northwest standards:

(a) Staff Development as required by the Board; and

(b) Professional Conduct of Staff;

(c) Career Ladder Participation (consistent with requirements of R277-526, Career Ladders in Education).

I. Standard VIII - Administration

(1) Northwest requirements as provided in the Annual Report:

(a) Responsibility and Leadership; and

(b) Administrative Staff Size.

J. Standard IX - Teacher Load

(1) Northwest requirements as provided in the Annual Report:

(a) Maximum Teacher Load; and

(b) Personnel Schedule.

K. Standard X - Student Activities

(1) Northwest requirements as provided in the Annual Report:

(a) Student Activities; and

(b) Audit for Student Activity Funds and Bond Requirements for Persons Managing Student Funds.

KEY: accreditation
March 22, 1999 **Art X Sec 3**
53A-1-402(1)
53A-1-401(3)

R277. Education, Administration.
R277-519. Educator Inservice Procedures and Credit.
R277-519-1. Definitions.

A. "USOE" means the Utah State Office of Education.

B. "Inservice" means training in which current teachers or individuals who have previously received a standard or basic teaching certificate may participate to renew a certificate, teach in another subject area or teach at another grade level.

C. "Courses" or "workshops" means an academic experience led and evaluated by an instructor. Courses are scheduled over several weeks duration; workshops are completed within a week. Courses and workshops require outside readings or completion of other assignments or both.

D. "Independent study" means an educational experience outside of courses or workshops. Independent study requires prior approval of the state or district professional development or inservice coordinator and a determination by that person of the requirements and credit warranted.

E. "Conference" means an educational event with a varied agenda offering a choice of sessions.

R277-519-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1)(a) which allows the Board to make rules regarding the qualifications of personnel providing direct student services and the certification of educators, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish definitions and standards for inservice instruction especially as it relates to teacher certification.

R277-519-3. General Inservice Requirements.

A. Proposals for inservice classes shall be approved at the district level and shall include:

(1) a descriptive outline of the class;

(2) a schedule of meeting dates and times; and

(3) a professional vita of the instructor(s).

B. Approval of inservice credit may be sought by:

(1) written request from a private provider to the appropriate USOE subject specialist or school district at least two weeks prior to the beginning date of the scheduled inservice, or

(2) a request through the computerized inservice program connected to the USOE certification system.

(a) The computerized process is available in most Utah school districts and area technology centers;

(b) Such requests shall be made at least one week prior to the beginning of the scheduled inservice.

R277-519-4. Inservice Credit.

A. Credit is available in half-credit units, beginning with one-half credit and up to three credits per educational experience.

B. Upon completion of the inservice experience, credit shall be awarded as follows:

(1) Sponsor submits an alphabetized list of participants' names and social security numbers to a school district, the subject specific USOE section, or designated educational agency;

(2) Subject specific USOE sections, district inservice coordinators, or designated educational agencies shall enter the names and social security numbers of the inservice participant on the computer listing screen. This information shall then be transferred by the USOE Certification Section to the individuals' certification files.

(3) Certificates of Completion may be issued by individual school districts for teacher use, but such certificates shall not be honored by the USOE Certification Section as verification of inservice completion.

C. Credit for Specific Inservice Experiences

(1) Courses and workshops: On the semester system, seven to thirteen contact hours equals one-half credit, fourteen to twenty contact classroom hours equal one credit.

(2) Independent study: forty two hours equal one credit.

(3) Conferences: no specific credit awarded unless a conference could also satisfy the criteria for a workshop or independent study. If so, credit may be issued upon prior approval by the USOE Certification Section of the experience.

(4) Consistent with R277-519-4A, inservice credit is available in half-credit units.

KEY: teacher certification, professional competency
March 22, 1999 **Art X Sec 3**
Notice of Continuation April 15, 1997 **53A-1-402(1)(a)**
53A-1-401(3)

R277. Education, Administration.
R277-702. Procedures for the Utah General Educational Development Certificate.
R277-702-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "GED Test" means the General Educational Development Test developed by the American Council on Education.

C. "Utah General Educational Development Certificate" means a certificate issued by the Board acknowledging competency on the part of the certificate holder in the GED test areas.

R277-702-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1)(b) which directs the Board to adopt rules regarding access to programs, competency levels and graduation requirements, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to describe the standards and procedures for obtaining a Utah General Educational Development Certificate.

R277-702-3. Eligibility for GED Testing.

A. Admission to a GED Test requires the following:

(1) that the applicant be at least 18 years of age and the applicant's graduating class has graduated; or

(2) that if the applicant is 17 or 18 years of age and the applicant's graduating class has not graduated, the GED testing center requires the following:

(a) a letter from the school district within which the applicant resides indicating the applicant is not regularly enrolled in school; and

(b) a letter from the applicant's parent or guardian authorizing the test (applicant age 18, or presenting a marriage license, is exempt from this requirement).

R277-702-4. Administrative Procedures and Standards for Testing and Certification.

A. The Board contracts with the General Educational Testing Service of the American Council on Education to administer the GED testing program in the state. The Board may contract with educational institutions within the state to administer the tests and provide related testing services. The number and location of the institutions designated as testing centers is determined in a manner that ensures that the test is reasonably accessible to potential applicants. Testing centers must meet the GED Testing Service requirements in the GED Examiner's Manual.

B. Persons desiring to take a GED Test must complete an application available from any official GED testing center of the Board and be eligible to take the GED Test under Subsection 3.

C. Persons desiring to obtain a Utah General Educational Development Certificate shall obtain a standard score of at least 40 on each of the five test components of the GED Test and obtain an overall average standard score of 45 on the five tests combined.

R277-702-5. Fee.

A. The Board, or its designee, shall adopt uniform fees for the General Educational Development Certificate and uniform forms, deadlines, and accounting procedures to administer this program.

B. A GED testing center, after consultation with the Board or its designee, shall adopt fees and forms for its GED testing.

R277-702-6. Official Transcripts.

Test scores shall be accepted by the Board when original scores are reported by:

A. Board-approved GED testing centers;

B. Transcript service of the Defense Activity for Non-Traditional Educational Support (DANTES);

C. Veterans Administration hospitals and centers; or

D. GED Testing Service.

R277-702-7. Adult High School Credit.

A local board of education may adopt standards and procedures for awarding credit on the basis of test results which may be applied toward a diploma.

KEY: adult education, educational testing, student competency
March 22, 1999 53A-1-402(1)(b)
Notice of Continuation January 14, 1998 53A-1-401(3)

R277. Education, Administration.
R277-733. Adult Basic Education and Adult High School Completion Programs.
R277-733-1. Definitions.

A. "Adult education" means instruction and educational services below the college level for adults who lack:

(1) basic education skills sufficient to enable them to function effectively in society as measured by performance below the ninth grade level on standardized achievement tests; or

(2) a certificate of graduation from a school providing the secondary education of levels nine through twelve.

B. "Board" means the Utah State Board of Education.

C. "Adult basic education" means a program funded through the state using state and federal funds to provide instruction for adults whose inability to compute or speak, read, or write the English language below the ninth grade level substantially impairs their ability to find or retain employment commensurate with their real ability. The instruction is designed to help adults by:

(1) increasing their independence;

(2) improving their ability to benefit from occupational training;

(3) increasing opportunities for more productive and profitable employment; and

(4) making them better able to meet adult responsibilities.

D. "Adult high school education" means a program funded with state funds to provide instruction in Board approved subjects which leads to a high school diploma for adults.

E. "Adult" means a person 18 years of age or over.

F. "Eligible adult education student" means a person who is a legal resident of the United States, makes his true and permanent home in Utah, and:

(1) is 17 years of age or older, and whose high school class has graduated;

(2) is under 18 years of age who is married; or

(3) has been adjudicated as an adult.

G. "Other eligible adult education student" means persons 16 to 18 years of age whose high school class has not graduated and are counted in the regular school program; the funds generated by those students are credited to the adult education program.

H. "Career option cluster" means a group of courses identified for university entry or technical/college entry not to exceed 10.5 credit hours.

I. "University entry option cluster" means a group of courses that have an academic focus and do not exceed 10.5 credit hours.

J. "Technical/college entry option cluster" means a group of courses that has a technical training focus, such as cabinetry, automotive, cosmetology, and does not exceed 10.5 credit hours.

K. "Training cluster" means a group of courses identified in a student's student educational/occupational plan as directly related to a student's specific job training.

L. "Tuition" means the base cost of providing services to the adult education student.

M. "Fee" means any charge, deposit, rental, or other mandatory payment, however designated, whether in the form of money or goods. Admission fees, transportation charges, and similar payments to third parties are fees if the charges are made in connection with an activity or function sponsored by or through a school. All fees are subject to approval by the local school board of education.

N. "Consumable items" means student workbooks, student packets, computer disks, pencils, papers, notebooks, and other similar personal items over which a student retains ownership during the course of study.

O. "Pre-level I" means grade content levels 0-2.

P. "Level I" means grade content levels 3-8.

Q. "Level II" means grade content levels 9-12.

R. "USOE" means the Utah State Office of Education.

R277-733-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which gives general control and supervision of the public school system to the Board, Section 53A-15-401 which places the general control and supervision of adult education under the Board, Section 53A-1-402(1) which allows the Board to adopt minimum standards for programs and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to describe curriculum, program standards, allocation formulas, and operation procedures for the adult education program.

R277-733-3. Federal Adult Education Act.

The Board adopts 20 U.S.C. 1201 et seq., hereby incorporated by reference, and the related current state plan required under that statute, as the standards and procedures governing the federally-funded portion of its adult education program, available from the USOE Adult Education Section.

R277-733-4. Program Standards.

A. A written student educational/occupational plan based upon an analysis of the student's goals and objectives, prior academic achievement, and work experience shall be developed for each adult education student and signed by the student and a designated local school official.

B. Local adult education programs shall make reasonable efforts to inform prospective students of the availability of the programs and provide enrollment information widely.

C. Only courses identified in Section 7 qualify for adult education funds. Only 25 percent of an adult education student's credits toward graduation may be electives.

D. Local adult education programs shall comply with state and federal requirements and Board rules. The USOE shall evaluate local programs to determine compliance.

R277-733-5. Fiscal Procedures.

A. State funds appropriated for adult education are allocated in accordance with Section 53A-17a-119.

B. No school district shall receive less than its portion of a six percent base amount of the appropriation if:

(1) instructional services approved by the USOE have been provided to eligible adult students during the preceding fiscal year; or

(2) the district is preparing to offer such services--such a preparation period may not exceed two years.

C. Lapsing and nonlapsing funds

(1) Funds appropriated for adult basic and adult high school programs are subject to Board accounting, auditing, and budgeting rules.

(2) State adult basic and adult high school funds which are allocated to local adult education programs and are not expended in a fiscal year may be carried over to the next fiscal year with approval by the USOE. These funds may be considered in determining the district's allocation for the next fiscal year.

(3) Federal adult education funds shall lapse after July 11 of each year.

D. The USOE shall develop uniform forms, deadlines, program reporting and accounting procedures, and guidelines to govern the state and federal adult basic skills and adult high school programs. The "Adult Education Guidelines for Fiscal, Student, and Program Accounting and Reporting" manual, February, 1995, includes these forms, procedures and guidelines and is available from the USOE.

R277-733-6. Adult Education Pupil Accounting.

A. A student under 19 years of age who has not graduated and who is a resident of the district, may, with approval under the state administered Adult Education Program, enroll in the Adult Basic and Adult High School Completion Program and generate regular state WPUs at the rate of 990 clock hours of membership per one weighted pupil unit per year, 1 F.T.E. on a yearly basis. The clock hours of students enrolled part-time must be prorated.

B. A student 17 years of age or over, without a high school diploma but whose high school class has graduated, who resides in the state of Utah, and who intends to graduate from high school, may enroll in the State Adult High School Completion Program. Student attendance up to 990 clock hours of membership is equivalent to 1 F.T.E. per year.

(1) The clock hours of students enrolled part-time shall be prorated.

(2) As an alternative, equivalent weighted pupil units may be generated for competencies mastered on the basis of prior authorization of a district plan by the USOE.

(3) The ten-day membership rule, defined in Section R277-419-1P, for Adult High School Completion students, is 10 clock hours.

R277-733-7. Adult Basic Education and Adult High School Education Curriculum.

A. Adult basic education shall consist of the following prerequisite courses to subsection R277-733-7B below:

(1) Pre-level I: Pre-Literacy;

(a) listening;

(b) speaking;

(c) cultural orientation.

(2) Level I: Literacy Courses;

(a) reading;

(b) writing;

(c) computation;

(d) information technology.

B. Adult high school completion shall satisfy Level II course content requirements with a minimum of 24 credits as provided below:

(1) Adult High School General Core Courses: 13.5 units of credit required:

(a) English: 3.0;

(b) mathematics: 2.0, elementary algebra or above;

(c) science: 2.0, with a maximum of one credit in at least two of the following areas: (1)chemistry; (2) biological science; (3) earth science; (4) physics;

(d) social studies: 3.0, 1.0 in United States history or American government; .5 in geography; .5 in world studies; 1.0 in elective social studies;

(e) information technology: .5;

(f) applied technology: 1.0;

(g) fine arts: 1.0;

(h) healthy life styles: 1.0.

(2) Adult High School Career Option Clusters: 10.5 additional units of credit shall be identified by the student education occupational plan with a five-credit concentration in either the technical college option cluster or the university entry option cluster, as noted below:

(a) university entry option cluster:

(i) foreign language/academic elective: 2.0;

(ii) mathematics: 1.0, intermediate algebra or above;

(iii) English: 1.0;

(iv) science: 1.0;

(v) electives: 5.5.

(b) technical/college entry option cluster:

(i) training cluster: 3.0;

(ii) career preparation: 2.0;;

(iii) electives: 5.5.

C. Individual programs may require additional credits, but they shall be offered at no expense to the adult student or to the state or federal adult basic skills and adult high school programs.

D. Courses may be completed on a demonstrated performance basis. Assessment of completion of course requirements is the responsibility of the local program.

E. All classes leading to a high school diploma shall meet applicable Board standards.

R277-733-8. Adult Basic and State High School Education Programs--Tuition and Fees.

A. Any adult may enroll in an adult education class as specified in Section 53A-15-404.

B. Tuition and fees may not be charged for pre-literacy or literacy courses.

C. Tuition may not be charged for adult high school general core courses.

D. Tuition may be charged for career option cluster courses, when adequate state or local funds are not available.

E. Fees may be charged for consumable and nonconsumable items necessary for adult high school general core courses, career option cluster courses, and adult high school general core courses, consistent with the definitions under R277-733-1G and R277-733-1H.

F. To qualify for free adult high school completion course work beyond the general core, a student shall declare his intent to graduate from high school.

R277-733-9. Allocation of Adult Education Funds.

Adult education funds shall be allocated to school districts as follows:

(1) Adult basic education formula (levels 0 through 8):

(a) Base amount - 10 percent of appropriation to be distributed equally to each district;

(b) Latest official census data - 45 percent of appropriation determined by the following:

(i) individuals 18 years of age and older who speak a language other than English at home;

(ii) individuals 18 years of age and older with less than a ninth grade education.

(c) Enrollees - 20 percent of appropriation determined by the following:

(i) enrollees in English as a second language (ESL) courses (levels 0 through 2);

(ii) enrollees in adult basic education (ABE) courses (levels 3 through 8).

(d) Student outcomes - 25 percent of appropriation shall be determined from among the following:

(i) number of clock hours of student attendance;

(ii) number of jobs obtained by students;

(iii) number of students that obtained a better job or salary increase;

(iv) number of students removed from welfare;

(v) number of students who completed English as a second language (ESL) and adult basic education (ABE) levels, or both;

(vi) number of students who entered a higher education/training program as approved by the USOE;

(vii) number of credits awarded to students;

(2) Adult high school allocation formula (levels 9 through 12):

(a) Six percent of the allocation shall be distributed equally to the districts as a base.

(b) Of the amount remaining following distribution of the base amount, 50 percent shall be distributed to school districts according to each district's percentage of ungraduated adults determined by the latest official census; and

(c) 50 percent shall be distributed to school districts as determined by student participation as follows:

(i) enrollees in adult high school completion (levels 9 through 12) - 12.5 percent;

(ii) units of credit earned through participation in approved adult high school completion courses - 12.5 percent;

(iii) high school diplomas awarded - 12.5 percent;

(iv) clock hours of student attendance - 12.5 percent.

KEY: adult education

March 22, 1999	**Art X Sec 3**
Notice of Continuation October 20, 1997	**53A-15-401**
	53A-1-402(1)
	53A-1-401(3)
	53A-15-404
	53A-12-101

R307. Environmental Quality, Air Quality.
R307-150. Emission Inventories.
R307-150-1. General Applicability.

(1) The following sources shall submit an emission inventory report:

(a) any Part 70 source;

(b) any source that emits or is allowed under R307 to emit 100 ton per year or more of any regulated air pollutant;

(c) any source located in Davis, Salt Lake, Utah or Weber County that emits or is allowed under R307 to emit 25 tons per year or more of a combination of PM10, sulfur oxides, or oxides of nitrogen;

(d) any source located in Davis, Salt Lake, Utah or Weber County that emits or is allowed under R307 to emit 10 tons per year or more of volatile organic compounds;

(e) any source that emits or is allowed under R307 to emit 5 tons per year or more of lead;

(f) any source that emits or is allowed under R307 to emit 10 tons or more per year of ammonia;

(g) any source that is allowed under R307 to emit between 90 and 100 tons per year of any regulated air pollutant;

(h) any source that the executive secretary requires to submit an inventory for any full or partial year on reasonable notice.

R307-150-2. Definitions.

The following additional definitions apply to R307-150:

"Acute Contaminant" means any noncarcinogenic air contaminant for which a threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents - Biological Exposure Indices, pages 15 - 40 (1997)."

"Carcinogenic Contaminant" means any air contaminant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents - Biological Exposure Indices, pages 15 - 40 (1997)."

"Chronic Contaminant" means any noncarcinogenic air contaminant for which a threshold limit value - time weighted average (TLV-TWA) having no threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents - Biological Exposure Indices, pages 15 - 40 (1997)."

"Dioxins" and "Furans" mean total tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

R307-150-3. What to Report.

(1) The requirements of R307-150 replace any annual inventory reporting requirements in approval orders issued prior to April 1, 1998.

(2) The emission inventory report shall include the information the Board deems necessary to determine whether the source is in compliance with R307 and federal regulations and standards. The data shall include ammonia, and all regulated air pollutants not exempted in (3) below that are not hazardous air pollutants that are emitted at a source. Data shall include the rate and period of emission, excess or breakdown emissions, startup and shut down emissions, specific installation which is the source of the air pollution, composition of air contaminant, type and efficiency of the air pollution control equipment and other information necessary to quantify operation and emissions, and to evaluate pollution control. The emissions of a pollutant shall be calculated using the source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the inventoried time period.

(3) Regulated air pollutants that are not PM10, sulfur oxides, oxides of nitrogen, carbon monoxide, PM2.5, ozone, volatile organic compounds, dioxins, furans, or hazardous air pollutants are exempt from being reported if they are emitted in an amount less than the smaller of the following:

(a) 500 pounds per year; or

(b) an annual emission level calculated to be the applicable threshold limit value - time weighted average (TLV-TWA) or the threshold limit value - ceiling (TLV-C) multiplied by the appropriate emission threshold factor in cubic meter pounds per milligram year. For an acute contaminant, the factor is 15.81; for a chronic contaminant, the factor is 21.22; for a carcinogenic contaminant, the factor is 7.07.

(4) In addition, any owner or operator of a source that is required by R307-150-1 to submit an inventory shall use appropriate emission factors and estimating techniques to estimate all emissions from each activity not required by R307-401 or R307-415 to be included in a notice of intent or operating permit application. The estimates shall be included in the inventory.

R307-150-4. Timing of Submittals.

(1) A report is required for 1998, 1999, and for every third year after 1999 for any source which actually emits or is allowed under R307 to emit 10 tons or more per year of ammonia.

(2) Report Every Third Year. The owner or operator of each of the following sources is required to submit a report of emissions every third year. The first report shall be due in 2000 for calendar year 1999 for:

(a) any Part 70 source located in Davis, Salt Lake, Utah or Weber Counties;

(b) any Part 70 temporary source;

(c) any Part 70 source located outside Davis, Salt Lake, Utah or Weber Counties with 25 tons per year or more of combined allowable emissions of PM10, sulfur oxides, oxides of nitrogen, volatile organic compounds or carbon monoxide; or

(d) any stationary source:

(i) located in Davis, Salt Lake, Utah or Weber County that emits or is allowed under R307 to emit a combination of PM10, sulfur oxides, or oxides of nitrogen of 25 tons per year or more;

(ii) located in Davis, Salt Lake, Utah or Weber County that emits or is allowed under R307 to emit 10 tons per year or more of volatile organic compounds;

(iii) located in Davis, Salt Lake, Weber, or Utah County that emits or is allowed under R307 to emit 100 tons per year or more of carbon monoxide;

(iv) that emits 100 tons per year or more of any regulated air pollutant; or

(v) that emits or is allowed to emit 5 tons per year or more

of lead;

(e) any source that is allowed under R307 to emit between 90 and 100 tons per year of any regulated air pollutant.

(3) Report Every Sixth Year. Any Part 70 source not included in R307-150-3(2) shall submit an emissions inventory every sixth year. The inventory for calendar year 1996 suffices as the first inventory.

(4) Additional Reports of Emissions Required Under Specified Circumstances. This subsection is applicable to all sources identified in R307-150-1.

(a) A source that initially achieves compliance at any time with any requirement of an applicable state implementation plan shall submit an inventory for the calendar year in which compliance is achieved.

(b) A source that emits or is allowed under R307 to emit 100 or more tons per year of any regulated air pollutant and whose emissions of any of these pollutants increase or decrease by five percent or more from the most recently submitted inventory shall submit an inventory for the calendar year in which the increase or decrease occurred.

(c) A source operating temporarily shall submit an inventory for the calendar year in which the source operated.

(d) A source that is not a temporary source, is required to submit an inventory, and ceases operations shall submit a report of emissions for the partial year and a report for the previous calendar year, if not already submitted.

(e) A new or modified source that is not a temporary source, is required to submit an inventory, and receives approval to construct or begins operating shall submit a report for the initial partial year of operation and a report for the subsequent calendar year.

(5) In addition to the required inventories, any source may choose to submit an inventory for any calendar year. The executive secretary may require at any time a full or partial year inventory on reasonable notice to affected sources.

(6) Due Date. Emission inventories shall be submitted on or before April 15 of each calendar year following any calendar year in which an inventory is required.

R307-150-5. Recordkeeping Requirements.

(1) Each owner or operator of a stationary source subject to this rule shall maintain a copy of the emission inventory submitted to the Division of Air Quality and records indicating how the information submitted in the inventory was determined, including any calculations, data, measurements, and estimates used. The records shall be kept for a period of at least five years from the due date of each emission statement or until the next inventory is due, whichever is longer.

(2) Upon the request of the executive secretary, the owner or operator of the stationary source shall make these records available at the stationary source for inspection by any representative of the Division of Air Quality during normal business hours.

KEY: air pollution, reports, inventories
March 4, 1999 19-2-104(1)(c)

R307. Environmental Quality, Air Quality.
R307-155. Hazardous Air Pollutant Inventory.
R307-155-1. General Applicability.

(1) The owner or operator of a Part 70 stationary source, either "major source" or "area source" as defined in the Clean Air Act Section 112 (42 U.S.C. 7412), that emits one or more hazardous air pollutants shall submit a hazardous air pollutant inventory.

(2) The owner or operator of a source which is not a Part 70 stationary source or a "major source" as defined in the Clean Air Act Section 112 (42 U.S.C. 7412) that emits one or more hazardous air pollutants shall submit a hazardous air pollutant inventory at the request of the executive secretary but not more often than once per year.

(3) Inventory data is not required for each hazardous air pollutant that has a threshold limit value and is emitted in an amount less than the smaller of the following:

(a) 500 pounds per year; or

(b) an annual emission level calculated to be the applicable threshold limit value - time weighted average (TLV-TWA) expressed in milligrams per cubic meter, or the threshold limit value - ceiling (TLV-C) expressed in milligrams per cubic meter multiplied by the appropriate emission threshold factor in cubic meter pounds per milligram year in Table 1 below.

TABLE 1

CONTAMINANT	FACTOR (in cubic meter pounds per milligram year)
Arsenic	21.22
Benzene	21.22
Beryllium	21.22
Ethylene oxide	21.22
Formaldehyde	15.81
All other acute hazardous air pollutants	15.81
All other chronic hazardous air pollutants	21.22
All other carcinogenic hazardous air pollutants	7.07

R307-155-2. Timing of Submittals.

(1) A source's hazardous air pollutant inventory shall be submitted at the same time as the inventory required by R307-150.

(2) The inventory shall be submitted no later than April 15 of each year following any calendar year for which the hazardous air pollutant inventory is required.

R307-155-3. What to Report.

The inventory shall include information for each hazardous air pollutant not excluded by R307-155-1(2). The inventory shall report the rate and period of emission, excess or breakdown emissions, the specific plant source of the emissions, the composition of the emission, the type and efficiency of air pollution control equipment, and any other information determined necessary by the executive secretary for the issuance of permits, the verification of compliance, and the determination of the effectiveness of control technology.

R307-155-4. Recordkeeping Requirements.

(1) Each owner or operator of a stationary source subject to this rule shall maintain a copy of the hazardous air pollutant emission inventory submitted to the Division of Air Quality and records indicating how the information submitted in the inventory was determined, including any calculations, data, measurements, and estimates used. The records shall be kept for a period of at least five years from the due date of each emission statement or until the next inventory is due, whichever is longer.

(2) Upon the request of the executive secretary, the owner or operator of the stationary source shall make these records available at the stationary source for inspection by any representative of the Division of Air Quality during normal business hours.

KEY: air pollution, hazardous air pollutant, inventories
March 4, 1999 19-2-104(1)(c)

R307. Environmental Quality, Air Quality.
R307-158. Emission Statement Inventory.
R307-158-1. Applicability.

The owner or operator of a stationary source emitting either volatile organic compounds or oxides of nitrogen that is located in Salt Lake, Davis, Weber, or Utah Counties or a nonattainment area for ozone and that emits or has the potential to emit 10 tons or more per year of volatile organic compounds or 25 tons or more per year of oxides of nitrogen is required to submit an emission statement for the emissions released directly or indirectly into the outdoor atmosphere in the calendar years specified in R307-158-2.

R307-158-2. Timing of Submittals.

(1) An emission statement shall be submitted for calendar year 1999 and every third year thereafter.

(2) A report shall be submitted for any additional calendar year for which the executive secretary requests submittal.

(3) A source that is not a temporary source that ceases operations shall submit a report for the partial year of operations and a report for the previous calendar year.

(4) A new or modified source that is not a temporary source that receives approval to construct or begins operating during the reporting period shall submit a report for the initial partial year of operation and the subsequent calendar year.

(5) A temporary source shall submit an inventory for the calendar year in which the source operated in Salt Lake, Davis, Weber, or Utah Counties or a nonattainment area for ozone.

(6) Emission statements shall be submitted on or before April 15 of each calendar year following any calendar year in which the source is subject to this rule.

(7) Each source required under R307-158-1 to file an emission statement inventory, and that emits or is allowed under R307 to emit 100 or more tons per year of volatile organic compounds or oxides of nitrogen, and whose emissions of any of these pollutants increase or decrease by five percent or more from the most recent inventory submitted under R307-150 shall submit an emission statement inventory for the calendar year in which the increase or decrease occurred.

R307-158-3. What to Report.

(1) The emission statement shall include information concerning both volatile organic compounds and oxides of nitrogen even if the source's emissions or its potential to emit equaled or exceeded the reporting level in R307-158-1 for only one of the pollutants. Compliance with the emission statement requirements does not relieve any owner or operator of a source from the responsibility to comply with any other applicable reporting requirements set forth in any federal or state law or in the conditions of approval of any order or certificate in effect.

(2) Emission statements shall be submitted to the Division of Air Quality on a form obtainable from the Division of Air Quality.

(3) Required contents of an emission statement. Any person who submits an emission statement shall include, as an integral part of the report:

(a) Certification, signed by the highest ranking individual with direct knowledge and overall responsibility for the information contained in the certified documents, that the information provided is true, accurate and complete. Such certification should be submitted with the understanding that submittal of false, inaccurate or incomplete information is subject to civil and criminal penalties.

(b) The date of the signature of certification and the telephone number of the certifying individual shall be included.

(4) The following source identification information shall be included:

(a) full name of the source;

(b) parent company name, if applicable;

(c) physical location of the source (i.e., the street address);

(d) mailing address of the source;

(e) SIC code(s) of the source;

(f) UTM coordinates or latitude and longitude of the source; and

(g) the calendar year of the emissions.

(5) The following operating data for each source operation which has the potential to emit volatile organic compounds or oxides of nitrogen shall be included:

(a) annual and peak ozone season throughput;

(b) average days of operation per week;

(c) average hours of operation per day; and

(d) total hours of operation for the year.

(6) The following information at the process level for oxides of nitrogen (expressed as molecular weight of nitrogen dioxide) and volatile organic compounds shall be included:

(a) Emissions information, including:

(i) the actual emissions of volatile organic compounds and oxides of nitrogen in tons per year;

(ii) the average emissions of volatile organic compounds and oxides of nitrogen in pounds per day of operation during the peak ozone season;

(iii) the estimated emissions method code for the method used to quantify the emissions as required by 42 U.S.C. 7512a(a)(1)(as included in the instructions provided by the executive secretary for filing the report required by R307-158-2(1)); and

(iv) any emission factor used to determine emissions.

(b) Control apparatus information, including current primary and secondary control apparatus identification codes as required by 42 U.S.C. 7512a(a)(1)(as included in the instructions provided by the executive secretary for filing the report required by R307-158-2(1); and the actual control efficiency achieved by the control apparatus. If the actual control efficiency is unavailable, the control apparatus design efficiency shall be used.

(c) Process rate data, including the annual process rate and the average process rate per day of operation during the peak ozone season.

(7) In place of the information required in R307-158-3(4) and R307-158-3(5), any source which has the potential to emit less than one ton per year of either volatile organic compounds or nitrogen oxides but that is subject to this rule shall include:

(a) a description of each source operation and emissions of each air contaminant emitted from each source operation shall be estimated at one ton per year, or

(b) a description of each source operation; estimated emission in tons per year; the estimated emissions method code for the method used to quantify the emissions as required by 42

U.S.C. 7512a(a)(1) (as included in the instructions provided by the executive secretary for filing the report required by R307-158-2(1)); and any emission factor used to determine emissions.

(8) Emission statements shall include cumulative total fugitive emissions for the stationary source for all fugitive emissions that cannot be reported in the information pursuant to R307-158-3(4) through R307-158-3(6) above. Such fugitive emissions shall be expressed in tons per year and in average pounds per day of operation during the peak ozone season.

(9) The method used for quantifying emissions for a source operation for use in preparing emission information required in R307-158-3(5)(a) or 158-3(6)(b) above shall be the method which is reasonably available and that best estimates the emissions from the source operation.

R307-158-4. Recordkeeping Requirements.

(1) Each owner or operator of a stationary source subject to this rule shall maintain a copy of the emission statement submitted to the Division of Air Quality and records indicating how the information submitted in the emission statement was determined, including any calculations, data, measurements, and estimates used. The records shall be kept for a period of at least five years from the due date of each emission statement.

(2) Upon the request of the executive secretary, the owner or operator of the stationary source shall make these records available at the stationary source for inspection by any representative of the Division of Air Quality during normal business hours.

KEY: air pollution, ozone, inventories
March 4, 1999 19-2-104(1)(c)

R307. Environmental Quality, Air Quality.
R307-170. Continuous Emission Monitoring Program.
R307-170-1. Purpose.

The purpose of this rule is to establish consistent requirements for all sources required to install a continuous monitoring system (CMS) and for sources who opt into the continuous emissions monitoring program.

R307-170-2 Authority.

Authority to require continuous emission monitoring devices is found in 19-2-104(1)(c), and authorization for a penalty for rendering inaccurate any monitoring device or method is found in 19-2-115(4). Authority to enforce 40 CFR Part 60 is obtained by its incorporation by reference under R307-210.

R307-170-3. Applicability.

Except as noted in (1) and (2) below, any source required to install a continuous monitoring system to determine emissions to the atmosphere or to measure control equipment efficiency is subject to R307-170.

(1) Any source subject to 40 CFR Part 60 as incorporated by R307-210, Standards of Performance for New Sources, is not subject to R307-170-6, Minimum Monitoring Requirements for Specific Sources.

(2) Any source required by an approval order issued under R307-401 to operate a continuous monitoring system to satisfy the requirements of R307-150, Periodic Reports of Emissions and Availability of Information, is not subject to R307-170-9(7), Excess Emission Report.

R307-170-4. Definitions.

The following additional definitions apply to R307-170.

"Accuracy" means the difference between a continuous monitoring system response and the results of an applicable EPA reference method obtained over the same sampling time.

"Averaging Period" means that period of time over which a pollutant or opacity is averaged to demonstrate compliance to an emission limitation or standard.

"Block Averages" means the total time expressed in fractions of hours over which emission data is collected and averaged.

"Calibration Drift" (zero drift and span drift) means the value obtained by subtracting the known standard or reference value from the raw response of the continuous monitoring system.

"Channel" means the pollutant, diluent, or opacity to be monitored.

"CMS Information" means the identifying information for each continuous monitoring system a source is required to install.

"Computer Enhancement" means computerized correction of a monitor's zero drift and span drift to reflect actual emission concentrations and opacity.

"Continuous Emission Monitoring System" (CEMS) means all equipment required to determine gaseous emission rates and to record the resulting data.

"Continuous Monitoring System" (CMS) means all equipment required to determine gaseous emission rates or opacity and to record the data.

"Continuous Opacity Monitoring System" means all equipment required to determine opacity and data recording.

"Cylinder Gas Audit" means an alternative relative accuracy test of a continuous emission monitoring system to determine its precision using gases certified by or traceable to National Institute of Standards and Technology (NIST) in the ranges specified in 40 CFR 60, Appendix F.

"Description Report" means a short but accurate description of events that caused continuous monitoring system irregularities or excess emissions which occurred during the reporting period submitted in the state electronic data report.

"Excess Emission Report" means a report within the state electronic data report which documents the date, time, and magnitude of each excess emission episode occurring during the reporting period.

"Excess Emissions" means the amount by which recorded emissions exceed those allowed by approval orders, operating permits, the state implementation plan, or any other provision of R307.

"Monitor" means the equipment in a continuous monitoring system that analyzes concentration or opacity and generates an electronic signal which is sent to a recording device.

"Monitor Availability" means any period in which both the source of emissions and the continuous monitoring system are operating and the minimum frequency of data capture occurred as required in 40 CFR 60.13.

"Monitor Unavailability" means any period in which the source of emissions is operating and the continuous monitoring system is:

a. not operating or minimum data capture did not occur,

b. not generating data, not recording data, or data is lost, or

c. out-of-control in the case of a continuous emissions monitor used for continuous compliance purposes.

"New Source Performance Standards" (NSPS) means 40 CFR 60, Standards of Performance for New Stationary Sources, incorporated by reference at R307-210.

"Operations Report" means the report of all information required under 40 CFR 60 for utilities and fossil fuel fired boilers.

"Performance Specification" means the operational tolerances for a continuous monitoring system as outlined in 40 CFR 60, Appendix B.

"Precision" means the difference between a continuous monitoring system response and the known concentration of a calibration gas or neutral density filter.

"Quality Assurance Calibrations" means calibrations, drift adjustments, and preventive maintenance activities on a continuous monitoring system.

"Raw Continuous Monitoring System Response" means a continuous monitoring system's uncorrected response used to determine calibration drift.

"Relative Accuracy Audit" means an alternative relative accuracy test procedure outlined in 40 CFR 60, Appendix A, which is used to correlate continuous emission monitoring system data to simultaneously collected reference method test data using no fewer than three reference method test runs.

"Relative Accuracy Test Audit" means the primary method of determining the correlation of continuous emissions monitoring system data to simultaneously collected reference method test data, using no fewer than nine reference method test runs conducted as outlined in 40 CFR 60, Appendix A.

"State Electronic Data Report" (SEDR) means the sum total of a source's monitoring activities which occurred during a reporting period.

"Summary Report" means the summary of all monitor and excess emission information which occurred during a reporting period.

"Tamper" means knowingly:

a. to make a false statement, representation, or certification in any application, report, record, plan, or other document filed or required to be maintained under R307-170, or

b. to render inaccurate any continuous monitoring system or device or any method required to maintain the accuracy of the continuous monitoring system or device.

"Valid Monitoring Data" means data collected by an accurately functioning continuous monitoring system while any installation monitored by the continuous monitoring system is in operation.

R307-170-5. General Requirements.

(1) Each source required to operate a continuous monitoring system is subject to the requirements of 40 CFR 60.13 (d) through (j), except as follows:

(a) When minimum emission data points are collected by the continuous monitoring system as required in 40 CFR 60.13 or applicable subparts, quality assurance calibration and maintenance activities shall not count against monitor availability.

(b) a monitor's unavailability due to calibration checks, zero and span checks, or adjustments required in 40 CFR 60.13 or R307-170 will not be considered a violation of R307-170.

(c) Monitor unavailability due to continuous monitoring system breakdowns will not be considered a violation provided that the owner or operator demonstrates, to the satisfaction of the executive secretary, that the malfunction was unavoidable and is being repaired as expeditiously as possible.

(d) Each source with minimum continuous monitoring system data collection requirements may conduct alternative sampling approved in writing by the executive secretary to supplement monitor availability requirements.

(2) Each source shall monitor and record all emissions data during all phases of source operations, including start-ups, shutdowns, and process malfunctions.

(3) Each source operating a continuous emissions monitoring system for compliance determination shall document each out-of-control period in the state electronic data report.

(4) Each continuous monitoring system subject to R307-170 shall be installed, operated, maintained, and calibrated in accordance with applicable performance specifications found in 40 CFR 60 Appendix B and Appendix F.

(5) Each continuous emissions monitoring system shall be configured so that calibration gas can be introduced at or as near to the probe inlet as possible. Each source shall conduct daily calibration zero drift and span drift checks and cylinder gas audits by flowing calibration gases at the probe inlet, or as near to the probe inlet as possible. Daily calibration drift checks and quarterly cylinder gas audit data shall be recorded by the continuous emissions monitoring system electronically to a strip chart recorder, data logger, or data recording devices.

(6) No person shall tamper with a continuous monitoring system.

(7) Any source that constructs two or more emission point sources which may interfere with visible emissions observations shall install a continuous opacity monitor to show compliance with visible emission limitations on each obstructed stack, duct or vent that has a visible emission limitation.

R307-170-6. Minimum Monitoring Requirements for Specific Sources.

(1) Fossil Fuel Fired Steam Generators.

(a) A continuous monitoring system for the measurement of opacity shall be installed, calibrated, maintained, and operated on any fossil fuel fired steam generator of greater than 250 million BTU per hour for each boiler except where:

(i) natural gas or oil or a mixture of natural gas and oil is the only fuel burned,

(ii) the source is able to comply with the applicable particulate matter and opacity regulations without using particulate matter collection equipment, and

(iii) the source has never been found through any administrative or judicial proceeding to be in violation of any visible emission standard or requirements.

(b) A continuous monitoring system for the measurement of sulfur dioxide shall be installed, calibrated, maintained, and operated on any fossil fuel fired steam generator of greater than 250 million BTU per hour heat input which has installed sulfur dioxide pollution control equipment.

(c) A continuous monitoring system for the measurement of nitrogen oxides shall be installed, calibrated, maintained, and operated on fossil fuel fired steam generators of greater than 1000 million BTU per hour heat input when such facility is located in an Air Quality Control Region where the executive secretary has specifically determined that a control strategy for nitrogen dioxide is necessary to attain the national standards, unless the source owner or operator demonstrates during source compliance tests as required by the executive secretary that such a source emits nitrogen oxides at levels 30 percent or more below the emission standard.

(d) A continuous monitoring system for the measurement of percent oxygen or carbon dioxide shall be installed, calibrated, maintained, and operated on any fossil fuel fired steam generators where measurements of oxygen or carbon dioxide in the flue gas are required to convert either sulfur dioxide or nitrogen oxides continuous emission monitoring data, or both, to units of the emission standard.

(2) Nitric Acid Plants.

Each nitric acid plant of greater than 300 tons per day production capacity, the production capacity being expressed as 100 percent acid, and located in an Air Quality Control Region where the Executive Secretary has specifically determined that a control strategy for nitrogen dioxide is necessary to attain the national standard, shall install, calibrate, maintain, and operate a continuous monitoring system for the measurement of nitrogen oxides for each nitric acid producing installation.

(3) Sulfuric Acid Plants - Burning and Production.

Each sulfuric acid plant of greater than 300 tons per day production capacity, the production being expressed as 100 percent acid, shall install, calibrate, maintain and operate a continuous monitoring system for the measurement of sulfur dioxide for each sulfuric acid producing installation within such plant.

(4) Petroleum Refineries - Fluid Bed Catalytic Cracking Unit Catalyst Regenerator.

Each catalyst regenerator for fluid bed catalytic cracking units of greater than 20,000 barrels per day fresh feed capacity shall install, calibrate, maintain and operate a continuous monitoring system for the measurement of opacity.

R307-170-7. Performance Specification Audits.

(1) Quarterly Audits.

Each continuous emissions monitoring system shall be audited at least once each calendar quarter. Successive quarterly audits shall be conducted at least two months apart. A relative accuracy test audit shall be conducted at least once every four calendar quarters as described in the applicable performance specification of 40 CFR 60, Appendix B.

(a) Relative accuracy shall be determined in units of the applicable emission limit.

(b) An alternative relative accuracy test (cylinder gas audit or relative accuracy audit) may be conducted in three of the four calendar quarters in place of conducting a relative accuracy test audit, but in no more than three quarters in succession.

(c) Each range of a dual range monitor shall be audited using an alternative relative accuracy audit procedure.

(d) Minor deviations from the reference method test must be submitted to the executive secretary for approval.

(e) Performance specification tests and audits shall be conducted so that the entire continuous monitoring system is concurrently tested.

(2) Notification.

The source shall notify the executive secretary of its intention to conduct a relative accuracy test audit by submitting a pretest protocol or by scheduling a pretest conference if directed to do so by the executive secretary. Each source shall notify the executive secretary no less than 45 days prior to testing.

(3) Audit Procedure.

A source may stop a relative accuracy test audit before the commencement of the fourth run to perform repairs or adjustments on the continuous emissions monitoring system. If the audit is stopped to make repairs or adjustments the audit must be started again from the beginning. If the fourth test run is started, testing shall be conducted until the completion of the ninth acceptable test run or the source may declare the monitor out-of-control and stop the test. If the system does not meet its applicable relative accuracy performance specification outlined in 40 CFR 60, Appendix B, its data may not be used in determining emissions rates until the system is successfully recertified.

(4) Performance Specification Tests.

(a) Except as listed in (b) below, all reference method testing equipment shall be totally independent of the continuous emissions monitoring system equipment undergoing a performance specification test.

(b) Reference method tests conducted on fuel gas lines, vapor recovery units, or other equipment as approved by the executive secretary may use a common probe, when the reference method sample line ties into the continuous emission monitor's probe or sample line as close to the probe inlet as possible.

(5) Submittal of Audit Results.

The source shall submit all relative accuracy performance specification test reports to the executive secretary no later than 60 days after completion of the test.

(a) Test reports shall include all raw reference method calibration data, raw reference method emission data with date and time stamps, and raw source continuous monitoring data with date and time stamps. All data shall be reported in concentration and units of the applicable emission limit.

(b) Relative accuracy performance specification test or audit reports shall include the company name, plant manager's name, mailing address, phone number, environmental contact's name, the monitor manufacturer, the model and serial number, the monitor range, and its location.

(6) Daily Drift Test.

Each source operating a continuous monitoring system shall conduct a daily zero and span calibration drift test as required in 40 CFR 60.13(d). The zero and span drifts shall be determined by using raw continuous monitoring system responses to a known value of the reference standard. Computer enhancements may be used to correct continuous monitoring system emission data which has been altered by monitor drift, but may not be used to determine daily zero and span drift.

(a) A monitor used for compliance which fails the daily calibration drift test as outlined in 40 CFR 60 Appendix F, Subpart 4, shall be declared out-of-control, and the out-of-control period shall be documented in the state electronic data report. The source shall make corrective adjustments to the system promptly. Continuous emission monitoring system data collected during the out-of-control period may not be used for monitor availability.

(b) Each source operating a continuous monitoring system which exceeds the calibration drift limit as outlined in 40 CFR 60 and the applicable performance specification shall make corrective adjustments promptly.

R307-170-8. Recordkeeping.

Each source subject to this rule shall maintain a file of all:

(1) parameters for each continuous monitoring system and monitoring device,

(2) performance test measurements,

(3) continuous monitoring system performance evaluations,

(4) continuous monitoring system or monitoring device calibration checks,

(5) adjustments and maintenance conducted on these systems or devices, and

(6) all other information required by this rule. Information shall be recorded in a permanent form suitable for inspection. The file shall be retained for at least two years following the date of such measurements, maintenance, reports, and records, and shall be available to the executive secretary at any time.

R307-170-9. State Electronic Data Report.

(1) General Reporting Requirements.

(a) Each source required to install a continuous monitoring system shall submit the state electronic data report including all information specified in (2) through (10) below. Each source shall submit a complete, unmodified report in an electronic ASCII format specified by the executive secretary.

(b) Partial Reports.

(i) If the total duration of excess emissions during the reporting period is less than one percent of the total operating time and the continuous monitoring system downtime is less than five percent of the total operating time, only the summary portion of the state electronic data report need be submitted.

(ii) If the total excess emission during the reporting period is equal to or greater than one percent of the total operating time, or the total monitored downtime is equal to or greater than five percent of the total operating time, the total state electronic data report shall be submitted.

(iii) Each source required to install a continuous monitoring system for the sole purpose of generating emissions inventory data is not required to submit the excess emission report required by (7) below or the excess emission summary required by (6)(b) below unless otherwise directed by the executive secretary.

(c) Frequency of Reporting. Each source subject to this rule shall submit a report to the executive secretary with the following frequency:

(i) Each source shall submit a report quarterly if required by the executive secretary or by 40 CFR Part 60, or if the continuous monitoring system data is used for compliance determination. Each source submitting quarterly reports shall submit them by January 30, April 30, July 30, and October 30 for the quarter ending 30 days earlier.

(ii) Any source subject to this rule and not required to submit a quarterly report shall submit its report semiannually by January 30 and July 30 for the six month period ending 30 days earlier.

(iii) The executive secretary may require any source to submit all emission data generated on a quarterly basis.

(2) Source Information.

The report shall contain source information including the company name, name of manager or responsible official, mailing address, AIRS number, phone number, environmental contact name, each source required to install a monitoring system, quarter or quarters covered by the report, year, and the operating time for each source.

(3) Continuous Monitoring System Information.

The report shall identify each channel, manufacturer, model number, serial number, monitor span, installation dates and whether the monitor is located in the stack or duct.

(4) Monitor Availability Reporting.

(a) The report shall include all periods that the pollutant concentration exceeded the span of the continuous monitoring system by source, channel, start date and time, and end date and time.

(b) Each continuous monitoring system outage or malfunction which occurs during source operation shall be reported by source, channel, start date and time, and end date and time.

(c) Alternative sampling methods approved in writing by the executive secretary may be used to supplement monitor availability and shall be reported by source, channel, start date and time, and end date and time, and may be used to offset monitor unavailability.

(d) Monitor modifications shall be reported by source, channel, date of modification, whether a support document was submitted, and the reason for the modification.

(5) Continuous Monitoring System Performance Specification Audits.

(a) Each source shall submit the results of each relative accuracy test audit, relative accuracy audit and cylinder gas audit. Each source which reports linearity tests may omit reporting cylinder gas audits.

(b) Each relative accuracy test audit shall be reported by source, channel, date of the most current relative accuracy test audit, date of the preceding relative accuracy test audit, number of months between relative accuracy test audits, units of applicable standard, average continuous emissions monitor response during testing, average reference method value, relative accuracy, and whether the continuous emissions monitor passed or failed the test or audit.

(c) A relative accuracy audit shall be reported by source, channel, date of audit, continuous emissions monitor response, relative accuracy audit response, percent precision, pass or fail results, and whether the monitor range is high or low.

(d) Cylinder gas audit and linearity tests shall be reported by source, channel, date, audit point number, cylinder identification, cylinder expiration date, type of certification, units of measurement, continuous emissions monitor response, cylinder concentration, percent precision, pass or fail results, and and whether the monitor range is high or low.

(6) Summary reports.

(a) Each source shall summarize and report each continuous monitoring system outage that occurred during the reporting period in the continuous monitoring system performance summary report. The summary must include the source, channels, monitor downtime as a percent of the total source operating hours, total monitor downtime, hours of monitor malfunction, hours of non-monitor malfunction, hours of quality assurance calibrations, and hours of other known and unknown causes of monitor downtime. A source operating a backup continuous monitoring system must account for monitor unavailability only when accurate emission data are not being collected by either continuous monitoring system.

(b) The summary report shall contain a summary of excess emissions which occurred during the reporting period unless the continuous monitoring system was installed to document compliance with an emission cap or to generate data for annual emissions inventories.

(i) Each source with multiple emission limitations per channel being monitored shall summarize excess emissions for each emission limitation.

(ii) The emission summary must include the source, channels, total hours of excess emissions as a percent of the total source operating hours, hours of start-up and shutdown, hours of control equipments problems, hours of process problems, hours of other known and unknown causes, emission limitation, units of measurement, and emission limitation

averaging period.

(c) When no continuous monitoring unavailability or excess emissions have occurred, this shall be documented by placing a zero under each appropriate heading.

(7) Excess Emissions Report.

(a) The magnitude and duration of all excess emissions shall be reported on an hourly basis in the excess emissions report.

(i) The duration of excess emissions based on block averages shall be reported in terms of hours over which the emissions were averaged. Each source that averages opacity shall average it over a six minute block and shall report the duration of excess opacity in tenths of an hour. Sources using a rolling average shall report the duration of excess emissions in terms of the number of hours being rolled into the averaging period.

(ii) Sources with multiple emission limitations per channel being monitored shall report the magnitude of excess emissions for each emission limitation.

(b) Each period of excess emissions that occurs shall be reported. Each episode of excess emission shall be accompanied with a reason code and action code which links the excess emission to a specific description which describes the events of the episode.

(8) Operations Report.

Each source operating fossil fuel fired steam generators subject to 40 CFR 60, Standards of Performance for New Stationary Sources, shall submit an operations report.

(9) Signed Statement.

(a) Each source shall submit a signed statement acknowledging under penalties of law that all information contained in the report is truthful and accurate, and is a complete record of all monitoring related events which occurred during the reporting period. In addition, each source with an operating permit issued under R307-415 shall submit the signed statement required in R307-415-5d.

(10) Descriptions.

Each source shall submit a narrative description explaining each event of monitor unavailability or excess emissions. Each description also shall be accompanied with reason codes and action codes that will link descriptions to events reported in the monitoring information and excess emission report.

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19-2-115(3)(b)
40 CFR 60

R307. Environmental Quality, Air Quality.
R307-417. Permits: Acid Rain Sources.
R307-417-1. Part 72 Requirements.

The provisions of 40 CFR Part 72, as in effect on July 1, 1998, for purposes of implementing an acid rain program that meets the requirements of Title IV of the Clean Air Act, are incorporated into these rules by reference. The term "permitting authority" shall mean the Executive Secretary of the Air Quality Board, and the term "Administrator" shall mean the Administrator of the Environmental Protection Agency. If the provisions or requirements of 40 CFR Part 72 conflict with or are not included in R307-15, Operating Permit Requirements, provisions and requirements of 40 CFR Part 72 shall apply and take precedence.

KEY: acid rain, air quality, permitting authority*, operating permits*
March 5, 1999 19-2-101
Notice of Continuation March 5, 1999 19-2-104(3)(q)

R313. Environmental Quality, Radiation Control.
R313-12. General Provisions.
R313-12-1. Authority.

The rules set forth herein are adopted pursuant to the provisions of Sections 19-3-104(3) and 19-3-104(6) and 63-38-3.

R313-12-2. Purpose and Scope.

It is the purpose of these rules to state such requirements as shall be applied in the use of radiation, radiation machines, and radioactive materials to ensure the maximum protection of the public health and safety to all persons at, or in the vicinity of, the place of use, storage, or disposal. These rules are intended to be consistent with the proper use of radiation machines and radioactive materials. Except as otherwise specifically provided, these rules apply to all persons who receive, possess, use, transfer, own or acquire any source of radiation, provided, however, that nothing in these rules shall apply to any person to the extent such person is subject to regulation by the U.S. Nuclear Regulatory Commission. See also R313-12-55.

R313-12-3. Definitions.

As used in these rules, these terms shall have the definitions set forth below. Additional definitions used only in a certain chapter will be found in that chapter.

"A_1" means the maximum activity of special form radioactive material permitted in a Type A package.

"A_2" means the maximum activity of radioactive material, other than special form radioactive material, low specific activity, and surface contaminated object material permitted in a Type A package. These values are either listed in 10 CFR 71, Appendix A, which is incorporated by reference in R313-19-100 or may be derived in accordance with the procedures prescribed in 10 CFR 71, Appendix A, which is incorporated by reference in R313-19-100.

"Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

"Accelerator produced material" means a material made radioactive by a particle accelerator.

"Act" means Utah Radiation Control Act, Title 19, Chapter 3.

"Activity" means the rate of disintegration or transformation or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

"Adult" means an individual 18 or more years of age.

"Address of use" means the building that is identified on the license and where radioactive material may be received, used or stored.

"Agreement State" means a state with which the United States Nuclear Regulatory Commission has entered into an effective agreement under Section 274 b. of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

"Airborne radioactive material" means a radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

"Airborne radioactivity area" means: a room, enclosure, or area in which airborne radioactive material exists in concentrations:

(a) In excess of the derived air concentrations (DACs), specified in R313-15, or

(b) To such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI), or 12 DAC hours.

"As low as reasonably achievable" (ALARA) means making every reasonable effort to maintain exposures to radiation as far below the dose limits as is practical, consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed or registered sources of radiation in the public interest.

"Area of use" means a portion of an address of use that has been set aside for the purpose of receiving, using, or storing radioactive material.

"Background radiation" means radiation from cosmic sources; naturally occurring radioactive materials, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices. "Background radiation" does not include sources of radiation from radioactive materials regulated by the Department under the Radiation Control Act or Rules.

"Becquerel" (Bq) means the SI unit of activity. One becquerel is equal to one disintegration or transformation per second.

"Bioassay" means the determination of kinds, quantities or concentrations, and in some cases, the locations of radioactive material in the human body, whether by direct measurement, in vivo counting, or by analysis and evaluation of materials excreted or removed from the human body. For purposes of these rules, "radiobioassay" is an equivalent term.

"Board" means the Radiation Control Board created under Section 19-1-106.

"Byproduct material" means:

(a) a radioactive material, with the exception of special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(b) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium or thorium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition.

"Calendar quarter" means not less than 12 consecutive weeks nor more than 14 consecutive weeks. The first calendar quarter of the year shall begin in January, and subsequent calendar quarters shall be arranged so that no day is included in more than one calendar quarter and no day in any one year is omitted from inclusion within a calendar quarter. The method observed by the licensee or registrant for determining calendar quarters shall only be changed at the beginning of a year.

"Calibration" means the determination of:

(a) the response or reading of an instrument relative to a series of known radiation values over the range of the instrument; or

(b) the strength of a source of radiation relative to a standard.

"CFR" means Code of Federal Regulations.

"Chelating agent" means a chemical ligand that can form coordination compounds in which the ligand occupies more than one coordination position. The agents include beta diketones, certain proteins, amine polycarboxylic acids, hydroxycarboxylic acids, gluconic acid, and polycarboxylic acids.

"Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

"Committed dose equivalent" ($H_{T,50}$), means the dose equivalent to organs or tissues of reference (T), that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

"Committed effective dose equivalent" ($H_{E,50}$), is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues.

"Controlled area" means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee or registrant for any reason.

"Curie" means a unit of measurement of activity. One curie (Ci) is that quantity of radioactive material which decays at the rate of 3.7×10^{10} disintegrations or transformations per second (dps or tps).

"Deep dose equivalent" (H_d), which applies to external whole body exposure, means the dose equivalent at a tissue depth of one centimeter (1000 mg/cm^2).

"Department" means the Utah State Department of Environmental Quality.

"Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

"Dose" is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, or total effective dose equivalent. For purposes of these rules, "radiation dose" is an equivalent term.

"Dose equivalent" (H_T), means the product of the absorbed dose in tissue, quality factor, and other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

"Dose limits" means the permissible upper bounds of radiation doses established in accordance with these rules. For purpose of these rules, "limits" is an equivalent term.

"Effective dose equivalent" (H_E), means the sum of the products of the dose equivalent to each organ or tissue (H_T), and the weighting factor (w_T,) applicable to each of the body organs or tissues that are irradiated.

"Embryo/fetus" means the developing human organism from conception until the time of birth.

"Entrance or access point" means an opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed or registered radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

"Executive Secretary" means the executive secretary of the board.

"Explosive material" means a chemical compound, mixture, or device which produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

"EXPOSURE" when capitalized, means the quotient of dQ by dm where "dQ" is the absolute value of the total charge of the ions of one sign produced in air when all the electrons, both negatrons and positrons, liberated by photons in a volume element of air having a mass of "dm" are completely stopped in air. The special unit of EXPOSURE is the roentgen (R). See R313-12-20 Units of exposure and dose for the SI equivalent. For purposes of these rules, this term is used as a noun.

"Exposure" when not capitalized as the above term, means being exposed to ionizing radiation or to radioactive material. For purposes of these rules, this term is used as a verb.

"EXPOSURE rate" means the EXPOSURE per unit of time, such as roentgen per minute and milliroentgen per hour.

"External dose" means that portion of the dose equivalent received from a source of radiation outside the body.

"Extremity" means hand, elbow, arm below the elbow, foot, knee, and leg below the knee.

"Eye dose equivalent" means the external dose equivalent to the lens of the eye at a tissue depth of 0.3 centimeter (300 mg/cm^2).

"Former United States Atomic Energy Commission (AEC) or United States Nuclear Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

"Generally applicable environmental radiation standards" means standards issued by the U.S. Environmental Protection Agency under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

"Gray" (Gy) means the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule per kilogram.

"Hazardous waste" means those wastes designated as hazardous by the U.S. Environmental Protection Agency rules in 40 CFR Part 261.

"Healing arts" means the disciplines of medicine, dentistry, osteopathy, chiropractic, and podiatry.

"High radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of one mSv (0.1 rem), in one hour at 30 centimeters from a source of radiation or from a surface that the radiation penetrates. For purposes of these rules, rooms or areas in which diagnostic x-ray systems are used for healing arts purposes are not considered high radiation areas.

"Human use" means the intentional internal or external administration of radiation or radioactive material to human

beings.

"Individual" means a human being.

"Individual monitoring" means the assessment of:

(a) dose equivalent, by the use of individual monitoring devices or, by the use of survey data; or

(b) committed effective dose equivalent by bioassay or by determination of the time weighted air concentrations to which an individual has been exposed, that is, DAC-hours.

"Individual monitoring devices" means devices designated to be worn by a single individual for the assessment of dose equivalent. For purposes of these rules, individual monitoring equipment and personnel monitoring equipment are equivalent terms. Examples of individual monitoring devices are film badges, thermoluminescent dosimeters (TLD's), pocket ionization chambers, and personal air sampling devices.

"Inspection" means an official examination or observation including, but not limited to, tests, surveys, and monitoring to determine compliance with rules, orders, requirements and conditions applicable to radiation sources.

"Interlock" means a device arranged or connected requiring the occurrence of an event or condition before a second condition can occur or continue to occur.

"Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

"License" means a license issued by the Executive Secretary in accordance with the rules adopted by the Board.

"Licensee" means a person who is licensed by the Department in accordance with these rules and the Act.

"Licensed or registered material" means radioactive material, received, possessed, used or transferred or disposed of under a general or specific license issued by the Executive Secretary.

"Licensing state" means a state which has been provisionally or finally designated as such by the Conference of Radiation Control Program Directors, Inc., which reviews state regulations to establish equivalency with the Suggested State Regulations and ascertains whether a State has an effective program for control of natural occurring or accelerator produced radioactive material (NARM). The Conference will designate as Licensing States those states with regulations for control of radiation relating to, and an effective program for, the regulatory control of NARM.

"Limits". See "Dose limits".

"Lost or missing source of radiation" means licensed or registered sources of radiation whose location is unknown. This definition includes, but is not limited to, radioactive material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

"Major processor" means a user processing, handling, or manufacturing radioactive material exceeding Type A quantities as unsealed sources or material, or exceeding four times Type B quantities as sealed sources, but does not include nuclear medicine programs, universities, industrial radiographers, or small industrial programs. Type A and B quantities are defined in 10 CFR 71.4.

"Member of the public" means an individual except when that individual is receiving an occupational dose.

"Minor" means an individual less than 18 years of age.

"Monitoring" means the measurement of radiation, radioactive material concentrations, surface area activities or quantities of radioactive material, and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of these rules, radiation monitoring and radiation protection monitoring are equivalent terms.

"NARM" means a naturally occurring or accelerator-produced radioactive material. It does not include byproduct, source or special nuclear material.

"NORM" means a naturally occurring radioactive material.

"Natural radioactivity" means radioactivity of naturally occurring nuclides.

"Nuclear Regulatory Commission" (NRC) means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

"Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties for the licensee or registrant involve exposure to sources of radiation, whether or not the sources of radiation are in the possession of the licensee, registrant, or other person. Occupational dose does not include doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with R313-32-75, from voluntary participation in medical research programs, or as a member of the public.

"Package" means the packaging together with its radioactive contents as presented for transport.

"Particle accelerator" means a machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of one MeV.

"Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, or another state or political subdivision or agency thereof, and a legal successor, representative, agent or agency of the foregoing.

"Personnel monitoring equipment," see individual monitoring devices.

"Pharmacist" means an individual licensed by this state to practice pharmacy. See Sections 58-17-1 through 58-17-27.

"Physician" means an individual licensed by this state to practice medicine and surgery in all its branches. See Sections 58-12-26 through 58-12-43.

"Practitioner" means an individual licensed by this state in the practice of a healing art. Examples would be, physician, dentist, podiatrist, osteopath, and chiropractor.

"Protective apron" means an apron made of radiation-attenuating materials used to reduce exposure to radiation.

"Public dose" means the dose received by a member of the public from sources of radiation from licensed or registered operations. Public dose does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with R313-32-75, or from voluntary participation in medical research programs.

"Pyrophoric material" means any liquid that ignites

spontaneously in dry or moist air at or below 130 degrees Fahrenheit (54.4 degrees Celsius) or any solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited and, when ignited, burns so vigorously and persistently as to create a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

"Quality factor" (Q) means the modifying factor, listed in Tables 1 and 2 of R313-12-20 that is used to derive dose equivalent from absorbed dose.

"Rad" means the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 erg per gram or 0.01 joule per kilogram

"Radiation" means alpha particles, beta particles, gamma rays, x-rays, neutrons, high speed electrons, high speed protons, and other particles capable of producing ions. For purposes of these rules, ionizing radiation is an equivalent term. Radiation, as used in these rules, does not include non-ionizing radiation, like radiowaves or microwaves, visible, infrared, or ultraviolet light.

"Radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem), in one hour at 30 centimeters from the source of radiation or from a surface that the radiation penetrates.

"Radiation machine" means a device capable of producing radiation except those devices with radioactive material as the only source of radiation.

"Radiation safety officer" means an individual who has the knowledge and responsibility to apply appropriate radiation protection rules and has been assigned such responsibility by the licensee or registrant.

"Radiation source." See "Source of radiation."

"Radioactive material" means a solid, liquid, or gas which emits radiation spontaneously.

"Radioactivity" means the transformation of unstable atomic nuclei by the emission of radiation.

"Radiobioassay". See "Bioassay".

"Registrant" means any person who is registered with respect to radioactive materials or radiation machines with the Executive Secretary or is legally obligated to register with the Executive Secretary pursuant to these rules and the Act.

"Registration" means registration with the Department in accordance with the rules adopted by the Board.

"Regulations of the U.S. Department of Transportation" means 49 CFR 100 through 189.

"Rem" means the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor. One rem equals 0.01 sievert (Sv).

"Research and development" means:

(a) theoretical analysis, exploration, or experimentation; or

(b) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

"Restricted area" means an area, access to which is limited by the licensee or registrant for the purpose of protecting individuals against undue risks from exposure to sources of radiation. A "Restricted area" does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

"Roentgen" (R) means the special unit of EXPOSURE. One roentgen equals 2.58×10^{-4} coulombs per kilogram of air. See EXPOSURE.

"Sealed source" means radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions which are likely to be encountered in normal use and handling.

"Shallow dose equivalent" (H_s) which applies to the external exposure of the skin or an extremity, means the dose equivalent at a tissue depth of 0.007 centimeter (seven mg per cm^2), averaged over an area of one square centimeter.

"SI" means an abbreviation of the International System of Units.

"Sievert" (Sv) means the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor. One Sv equals 100 rem.

"Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

"Source container" means a device in which sealed sources are transported or stored.

"Source material" means:

(a) uranium or thorium, or any combination thereof, in any physical or chemical form, or

(b) ores that contain by weight one-twentieth of one percent (0.05 percent), or more of, uranium, thorium, or any combination of uranium and thorium. Source material does not include special nuclear material.

"Source material milling" means any activity that results in the production of byproduct material as defined by (b) of "byproduct material".

"Source of radiation" means any radioactive material, or a device or equipment emitting or capable of producing ionizing radiation.

"Special form radioactive material" means radioactive material which satisfies the following conditions:

(a) it is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(b) the piece or capsule has at least one dimension not less than five millimeters (0.197 inch); and

(c) it satisfies the test requirements specified by the U.S. Nuclear Regulatory Commission in 10 CFR 71.75. A special form encapsulation designed in accordance with the U.S. Nuclear Regulatory Commission requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation designed in accordance with the requirements of Section 71.4 in effect on March 31, 1996, (see 10 CFR 71 revised January 1, 1983), and constructed before April 1, 1998, may continue to be used. Any

other special form encapsulation must meet the specifications of this definition.

"Special nuclear material" means:

(a) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and other material that the U.S. Nuclear Regulatory Commission, pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material; or

(b) any material artificially enriched by any of the foregoing but does not include source material.

"Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams or a combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed one. For example, the following quantities in combination would not exceed the limitation and are within the formula:

((175(Grams contained U-235)/350) + (50(Grams U-233/200) + (50(Grams Pu)/200)) is equal to one.

"Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of sources of radiation. When appropriate, such evaluation includes, but is not limited to, tests, physical examinations and measurements of levels of radiation or concentrations of radioactive material present.

"Test" means the process of verifying compliance with an applicable rule.

"These rules" means "Utah Radiation Control Rules".

"Total effective dose equivalent" (TEDE) means the sum of the deep dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

"Total organ dose equivalent" (TODE) means the sum of the deep dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in R313-15-1107(1)(f).

"U.S. Department of Energy" means the Department of Energy established by Public Law 95-91, August 4, 1977, 91 Stat. 565, 42 U.S.C. 7101 et seq., to the extent that the Department exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof pursuant to sections 104(b), (c), and (d) of Public Law 93-438, October 11, 1974, 88 Stat. 1233 at 1237, effective January 19, 1975 known as the Energy Reorganization Act of 1974, and retransferred to the Secretary of Energy pursuant to section 301(a) of Public Law 95-91, August 14, 1977, 91 Stat. 565 at 577-578, 42 U.S.C. 7151, effective October 1, 1977 known as the Department of Energy Organization Act.

"Unrefined and unprocessed ore" means ore in its natural form prior to processing, like grinding, roasting, beneficiating or refining.

"Unrestricted area" means an area, to which access is neither limited nor controlled by the licensee or registrant. For purposes of these rules, "uncontrolled area" is an equivalent term.

"Waste" means those low-level radioactive wastes that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level waste has the same meaning as in the Low-Level Radioactive Waste Policy Act, P.L. 96-573, as amended by P.L. 99-240, effective January 15, 1986; that is, radioactive waste:

(a) not classified as high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in Section 11e.(2) of the Atomic Energy Act (uranium or thorium tailings and waste) and

(b) classified by the U.S. Nuclear Regulatory Commission as low-level radioactive waste consistent with existing law and in accordance with (a) above.

"Waste collector licensees" means persons licensed to receive and store radioactive wastes prior to disposal or persons licensed to dispose of radioactive waste.

"Week" means seven consecutive days starting on Sunday.

"Whole body" means, for purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knees.

"Worker" means an individual engaged in work under a license or registration issued by the Executive Secretary and controlled by a licensee or registrant, but does not include the licensee or registrant.

"Working level" (WL), means any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of 1.3×10^5 MeV of potential alpha particle energy. The short-lived radon daughters are, for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon 220: polonium-216, lead-212, bismuth-212, and polonium-212.

"Working level month" (WLM), means an exposure to one working level for 170 hours. 2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month.

"Year" means the period of time beginning in January used to determine compliance with the provisions of these rules. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the decision to make the change is made not later than December 31 of the previous year. If a licensee or registrant changes in a year, the licensee or registrant shall assure that no day is omitted or duplicated in consecutive years.

R313-12-20. Units of Exposure and Dose.

(1) As used in these rules, the unit of EXPOSURE is the coulomb per kilogram (C per kg). One roentgen is equal to 2.58×10^{-4} coulomb per kilogram of air.

(2) As used in these rules, the units of dose are:

(a) Gray (Gy) is the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule per kilogram. One gray equals 100 rad.

(b) Rad is the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 erg per gram or 0.01 joule per kilogram. One rad equals 0.01 Gy.

(c) Rem is the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor. One rem equals 0.01 Sv.

(d) Sievert (Sv) is the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor. One Sv equals 100 rem.

(3) As used in these rules, the quality factors for converting absorbed dose to dose equivalent are shown in Table 1.

TABLE 1

Quality Factors and Absorbed Dose Equivalencies

Type of Radiation	Quality Factor (Q)	Absorbed Dose Equal to a Unit Dose Equivalent
X, gamma, or beta radiation and high-speed electrons	1	1
Alpha particles, multiple-charged particles, fission fragments and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High energy protons	10	0.1

For the column in Table 1 labeled "Absorbed Dose Equal to a Unit Dose Equivalent", the absorbed dose in rad is equal to one rem or the absorbed dose in gray is equal to one Sv.

(4) If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in sievert per hour or rem per hour, as provided in R313-12-20(3), 0.01 Sv of neutron radiation of unknown energies may, for purposes of these rules, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee or registrant may use the fluence rate per unit dose equivalent or the appropriate Q value from Table 2 to convert a measured tissue dose in gray or rad to dose equivalent in sievert or rem.

TABLE 2

Mean Quality Factors, Q, and Fluence Per Unit Dose Equivalent for Monoenergetic Neutrons

	Neutron Energy Mev	Quality Factor Q	Fluence per Unit Dose Equivalent neutrons cm^{-2} rem^{-1}	Fluence per Unit Dose Equivalent neutrons cm^{-2} Sv^{-1}
thermal	2.5×10^{-8}	2	980×10^6	980×10^8
	1×10^{-7}	2	980×10^6	980×10^8
	1×10^{-6}	2	810×10^6	810×10^8
	1×10^{-5}	2	810×10^6	810×10^8
	1×10^{-4}	2	840×10^6	840×10^8
	1×10^{-3}	2	980×10^6	980×10^8
	1×10^{-2}	2.5	1010×10^6	1010×10^8
	1×10^{-1}	7.5	170×10^6	170×10^8
	5×10^{-1}	11	39×10^6	39×10^8
	1	11	27×10^6	27×10^8
	2.5	9	29×10^6	29×10^8
	5	8	23×10^6	23×10^8
	7	7	24×10^6	24×10^8
	10	6.5	24×10^6	24×10^8
	14	7.5	17×10^6	17×10^8
	20	8	16×10^6	16×10^8
	40	7	14×10^6	14×10^8
	60	5.5	16×10^6	16×10^8
	1×10^2	4	20×10^6	20×10^8
	2×10^2	3.5	19×10^6	19×10^8
	3×10^2	3.5	16×10^6	16×10^8
	4×10^2	3.5	14×10^6	14×10^8

For the column in Table 2 labeled "Quality Factor", the values of Q are at the point where the dose equivalent is maximum in a 30 cm diameter cylinder tissue-equivalent phantom.

For the columns in Table 2 labeled "Fluence per Unit Dose Equivalent", the values are for monoenergetic neutrons incident normally on a 30 cm diameter cylinder tissue equivalent phantom.

R313-12-40. Units of Radioactivity.

For purposes of these rules, activity is expressed in the SI unit of becquerel (Bq), or in the special unit of curie (Ci), or their multiples, or disintegrations or transformations per unit of time.

(1) One becquerel (Bq) equals one disintegration or transformation per second.

(2) One curie (Ci) equals 3.7×10^{10} disintegrations or transformations per second, which equals 3.7×10^{10} becquerel, which equals 2.22×10^{12} disintegrations or transformations per minute.

R313-12-51. Records.

(1) A licensee or registrant shall maintain records showing the receipt, transfer, and disposal of all sources of radiation.

(2) Prior to license termination, each licensee authorized to possess radioactive material with a half-life greater than 120 days, in an unsealed form, may forward the following records to the Executive Secretary:

(a) records of disposal of licensed material made under R313-15-1002 (including burials authorized before January 28, 1981), R313-15-1003, R313-15-1004, R313-15-1005; and

(b) records required by R313-15-1103(2)(d).

NOTE: 10 CFR 20.304 permitted burial of small quantities of licensed materials in soil before January 28, 1981, without specific U.S. Nuclear Regulatory Commission authorization. See 20.304 contained in the 10 CFR, parts 0 to 199, edition revised as of January 1, 1981.

(3) If licensed activities are transferred or assigned in accordance with R313-19-34(2), each licensee authorized to possess radioactive material, with a half-life greater than 120 days, in an unsealed form, shall transfer the following records to the new licensee and the new licensee will be responsible for maintaining these records until the license is terminated:

(a) records of disposal of licensed material made under R313-15-1002 (including burials authorized before January 28, 1981), R313-15-1003, R313-15-1004, R313-15-1005; and

(b) records required by R313-15-1103(2)(d).

(4) Prior to license termination, each licensee may forward the records required by R313-22-35(7) to the Executive Secretary.

(5) Additional records requirements are specified elsewhere in these rules.

R313-12-52. Inspections.

(1) A licensee or registrant shall afford representatives of the Executive Secretary, at reasonable times, opportunity to inspect sources of radiation and the premises and facilities wherein those sources of radiation are used or stored.

(2) A licensee or registrant shall make available to representatives of the Executive Secretary for inspection, upon reasonable notice, records maintained pursuant to these rules.

R313-12-53. Tests.

(1) A licensee or registrant shall perform upon instructions from a representative of the Board or the Executive Secretary or shall permit the representative to perform reasonable tests as the representative deems appropriate or necessary including, but not limited to, tests of:

(a) sources of radiation;

(b) facilities wherein sources of radiation are used or stored;

(c) radiation detection and monitoring instruments; and

(d) other equipment and devices used in connection with utilization or storage of licensed or registered sources of radiation.

R313-12-54. Additional Requirements.

The Board may, by rule, or order, impose upon a licensee or registrant requirements in addition to those established in these rules that it deems appropriate or necessary to minimize any danger to public health and safety or the environment.

R313-12-55. Exemptions.

(1) The Board may, upon application or upon its own initiative, grant exemptions or exceptions from the requirements of these rules as it determines are authorized by law and will not result in undue hazard to public health and safety or the environment.

(2) U.S. Department of Energy contractors or subcontractors and U.S. Nuclear Regulatory Commission contractors or subcontractors operating within this state are exempt from these rules to the extent that the contractor or subcontractor under his contract receives, possesses, uses, transfers, or acquires sources of radiation. The following contractor categories are included:

(a) prime contractors performing work for the U.S. Department of Energy at U.S. Government-owned or controlled sites, including the transportation of sources of radiation to or from the sites and the performance of contract services during temporary interruptions of the transportation;

(b) prime contractors of the U.S. Department of Energy performing research in, or development, manufacture, storage, testing or transportation of, atomic weapons or components thereof;

(c) prime contractors of the U.S. Department of Energy using or operating nuclear reactors or other nuclear devices in a United States Government-owned vehicle or vessel; and

(d) any other prime contractor or subcontractor of the U.S. Department of Energy or of the U.S. Nuclear Regulatory Commission when the state and the U.S. Nuclear Regulatory Commission jointly determine (i) that the exemption of the prime contractor or subcontractor is authorized by law; and (ii) that under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety.

R313-12-70. Impounding.

Sources of radiation shall be subject to impounding pursuant to Section 19-3-111. Persons who have a source of radiation impounded are subject to fees established in accordance with the Legislative Appropriations Act for the actual cost of the management and oversight activities performed by representatives of the Executive Secretary.

R313-12-100. Prohibited Uses.

(1) A hand-held fluoroscopic screen using x-ray equipment shall not be used unless it has been listed in the Registry of Sealed Source and Devices or accepted for certification by the U.S. Food and Drug Administration, Center for Devices and Radiological Health.

(2) A shoe-fitting fluoroscopic device shall not be used.

R313-12-110. Communications.

All communications and reports concerning these rules, and applications filed thereunder, should be addressed to the Division of Radiation Control, P.O. Box 144850, 168 North 1950 West, Salt Lake City, Utah 84114-4850.

KEY: definitions, units, inspections, exemptions
March 12, 1999 19-3-104
Notice of Continuation March 26, 1997 19-3-108

R313. Environmental Quality, Radiation Control.
R313-15. Standards for Protection Against Radiation.
R313-15-1. Purpose, Authority and Scope.

(1) R313-15 establishes standards for protection against ionizing radiation resulting from activities conducted pursuant to licenses issued by the Executive Secretary. These rules are issued pursuant to Sections 19-3-104(3) and 19-3-104(6).

(2) The requirements of Rule R313-15 are designed to control the receipt, possession, use, transfer, and disposal of sources of radiation by any licensee or registrant so the total dose to an individual, including doses resulting from all sources of radiation other than background radiation, does not exceed the standards for protection against radiation prescribed in Rule R313-15. However, nothing in Rule R313-15 shall be construed as limiting actions that may be necessary to protect health and safety.

(3) Except as specifically provided in other sections of these rules, Rule R313-15 applies to persons licensed or registered by the Executive Secretary to receive, possess, use, transfer, or dispose of sources of radiation. The limits in Rule R313-15 do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, to exposure from individuals administered radioactive material and released in accordance with Section R313-32-75, or to exposure from voluntary participation in medical research programs.

R313-15-2. Definitions.

"Annual limit on intake" (ALI) means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective dose equivalent of 0.05 Sv (5 rem) or a committed dose equivalent of 0.5 Sv (50 rem) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table I, Columns 1 and 2, of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference.

"Class" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for Class D, Days, of less than ten days, for Class W, Weeks, from ten to 100 days , and for Class Y, Years, of greater than 100 days. For purposes of these rules, "lung class" and "inhalation class" are equivalent terms.

"Constraint (dose constraint)" in accordance with 10 CFR 20.1003, means a value above which specified licensee actions are required.

"Declared pregnant woman" means a woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception.

"Derived air concentration" (DAC) means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work, results in an intake of one ALI. For purposes of these rules, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for 2,000 hours in a year. DAC values are given in Table I, Column 3, of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference.

"Derived air concentration-hour" (DAC-hour) means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee or registrant may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 0.05 Sv (5 rem).

"Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

"Inhalation class", refer to "Class".

"Labeled package" means a package labeled with a Radioactive White I, Yellow II, or Yellow III label as specified in U.S. Department of Transportation regulations 49 CFR 172.403 and 49 CFR 172.436 through 440, 1997 ed. Labeling of packages containing radioactive materials is required by the U.S. Department of Transportation if the amount and type of radioactive material exceeds the limits for an excepted quantity or article as defined and limited by U.S. Department of Transportation regulations 49 CFR 173.403(m) and (w) and 49 CFR 173.421 through 424, 1997 ed.

"Lung class", refer to "Class".

"Nonstochastic effect" means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of these rules, "deterministic effect" is an equivalent term.

"Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

"Quarter" means a period of time equal to one-fourth of the year observed by the licensee, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

"Reference Man" means a hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health employees to standardize results of experiments and to relate biological insult to a common base. A description of the Reference Man is contained in the International Commission on Radiological Protection report, ICRP Publication 23, "Report of the Task Group on Reference Man."

"Respiratory protective equipment" means an apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials.

"Sanitary sewerage" means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee or registrant.

"Stochastic effect" means a health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of these rules,

"probabilistic effect" is an equivalent term.

"Very high radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving an absorbed dose in excess of five Gy (500 rad) in one hour at one meter from a source of radiation or from any surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose, gray and rad, are appropriate, rather than units of dose equivalent, sievert and rem.

"Weighting factor" w_T for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:

TABLE

ORGAN DOSE WEIGHTING FACTORS

Organ or Tissue	w_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30(1)
Whole Body	1.00(2)

(1) 0.30 results from 0.06 for each of five "remainder" organs, excluding the skin and the lens of the eye, that receive the highest doses.
(2) For the purpose of weighting the external whole body dose, for adding it to the internal dose, a single weighting factor, $w_T = 1.0$, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

R313-15-3. Implementation.

(1) Any existing license or registration condition that is more restrictive than Rule R313-15 remains in force until there is an amendment or renewal of the license or registration.

(2) If a license or registration condition exempts a licensee or registrant from a provision of Rule R313-15 in effect on or before January 1, 1994, it also exempts the licensee or registrant from the corresponding provision of Rule R313-15.

(3) If a license or registration condition cites provisions of Rule R313-15 in effect prior to January 1, 1994, which do not correspond to any provisions of Rule R313-15, the license or registration condition remains in force until there is an amendment or renewal of the license or registration that modifies or removes this condition.

R313-15-101. Radiation Protection Programs.

(1) Each licensee or registrant shall develop, document, and implement a radiation protection program sufficient to ensure compliance with the provisions of Rule R313-15. See Section R313-15-1102 for recordkeeping requirements relating to these programs.

(2) The licensee or registrant shall use, to the extent practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and public doses that are as low as is reasonably achievable (ALARA).

(3) The licensee or registrant shall, at intervals not to exceed 12 months, review the radiation protection program content and implementation.

(4) To implement the ALARA requirements of Subsection R313-15-101(2), and notwithstanding the requirements in Section R313-15-301, a constraint on air emissions of radioactive material to the environment, excluding radon-222 and its decay products, shall be established by licensees or registrants such that the individual member of the public likely to receive the highest dose will not be expected to receive a total effective dose equivalent in excess of 0.1 mSv (10 mrem) per year from these emissions. If a licensee or registrant subject to this requirement exceeds this dose constraint, the licensee or registrant shall report the exceedance as provided in Section R313-15-1203 and promptly take appropriate corrective action to ensure against recurrence.

R313-15-201. Occupational Dose Limits for Adults.

(1) The licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures pursuant to Section R313-15-206, to the following dose limits:

(a) An annual limit, which is the more limiting of:

(i) The total effective dose equivalent being equal to 0.05 Sv (5 rem); or

(ii) The sum of the deep dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 0.50 Sv (50 rem).

(b) The annual limits to the lens of the eye, to the skin, and to the extremities which are:

(i) An eye dose equivalent of 0.15 Sv (15 rem), and

(ii) A shallow dose equivalent of 0.50 Sv (50 rem) to the skin or to any extremity.

(2) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual may receive during the current year and during the individual's lifetime. See Subsections R313-15-206(5)(a) and R313-15-206(5)(b).

(3) The assigned deep dose equivalent and shallow dose equivalent shall be for the portion of the body receiving the highest exposure determined as follows:

(a) The deep dose equivalent, eye dose equivalent and shallow dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable; or

(b) When a protective apron is worn while working with medical fluoroscopic equipment and monitoring is conducted as specified in Subsection R313-15-502(1)(d), the effective dose equivalent for external radiation shall be determined as follows:

(i) When only one individual monitoring device is used and it is located at the neck outside the protective apron, and the reported dose exceeds 25 percent of the limit specified in Subsection R313-15-201(1), the reported deep dose equivalent value multiplied by 0.3 shall be the effective dose equivalent for external radiation; or

(ii) When individual monitoring devices are worn, both under the protective apron at the waist and outside the

protective apron at the neck, the effective dose equivalent for external radiation shall be assigned the value of the sum of the deep dose equivalent reported for the individual monitoring device located at the waist under the protective apron multiplied by 1.5 and the deep dose equivalent reported for the individual monitoring device located at the neck outside the protective apron multiplied by 0.04.

(4) Derived air concentration (DAC) and annual limit on intake (ALI) values are specified in Table I of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference, and may be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits. See Section R313-15-1107.

(5) Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to ten milligrams in a week in consideration of chemical toxicity. See footnote 3, of Appendix B of 10 CFR 20.1001 to 20-2402, 1997 ed., which is incorporated by reference.

(6) The licensee or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person. See Subsection R313-15-205(5).

R313-15-202. Compliance with Requirements for Summation of External and Internal Doses.

(1) If the licensee or registrant is required to monitor pursuant to both Subsections R313-15-502(1) and R313-15-502(2), the licensee or registrant shall demonstrate compliance with the dose limits by summing external and internal doses. If the licensee or registrant is required to monitor only pursuant to Subsection R313-15-502(1) or only pursuant to Subsection R313-15-502(2), then summation is not required to demonstrate compliance with the dose limits. The licensee or registrant may demonstrate compliance with the requirements for summation of external and internal doses pursuant to Subsections R313-15-202(2), R313-15-202(3) and R313-15-202(4). The dose equivalents for the lens of the eye, the skin, and the extremities are not included in the summation, but are subject to separate limits.

(2) Intake by Inhalation. If the only intake of radionuclides is by inhalation, the total effective dose equivalent limit is not exceeded if the sum of the deep dose equivalent divided by the total effective dose equivalent limit, and one of the following, does not exceed unity:

(a) The sum of the fractions of the inhalation ALI for each radionuclide, or

(b) The total number of derived air concentration-hours (DAC-hours) for all radionuclides divided by 2,000, or

(c) The sum of the calculated committed effective dose equivalents to all significantly irradiated organs or tissues (T) calculated from bioassay data using appropriate biological models and expressed as a fraction of the annual limit. For purposes of this requirement, an organ or tissue is deemed to be significantly irradiated if, for that organ or tissue, the product of the weighting factors, w_T, and the committed dose equivalent, $H_{T,50}$, per unit intake is greater than ten percent of the maximum weighted value of $H_{T,50}$, that is, $w_T H_{T,50}$, per unit intake for any organ or tissue.

(3) Intake by Oral Ingestion. If the occupationally exposed individual receives an intake of radionuclides by oral ingestion greater than ten percent of the applicable oral ALI, the licensee or registrant shall account for this intake and include it in demonstrating compliance with the limits.

(4) Intake through Wounds or Absorption through Skin. The licensee or registrant shall evaluate and, to the extent practical, account for intakes through wounds or skin absorption. The intake through intact skin has been included in the calculation of DAC for hydrogen-3 and does not need to be evaluated or accounted for pursuant to Subsection R313-15-202(4).

R313-15-203. Determination of External Dose from Airborne Radioactive Material.

(1) Licensees or registrants shall, when determining the dose from airborne radioactive material, include the contribution to the deep dose equivalent, eye dose equivalent, and shallow dose equivalent from external exposure to the radioactive cloud. See footnotes 1 and 2 of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference.

(2) Airborne radioactivity measurements and DAC values shall not be used as the primary means to assess the deep dose equivalent when the airborne radioactive material includes radionuclides other than noble gases or if the cloud of airborne radioactive material is not relatively uniform. The determination of the deep dose equivalent to an individual shall be based upon measurements using instruments or individual monitoring devices.

R313-15-204. Determination of Internal Exposure.

(1) For purposes of assessing dose used to determine compliance with occupational dose equivalent limits, the licensee or registrant shall, when required pursuant to Section R313-15-502, take suitable and timely measurements of:

(a) Concentrations of radioactive materials in air in work areas; or

(b) Quantities of radionuclides in the body; or

(c) Quantities of radionuclides excreted from the body; or

(d) Combinations of these measurements.

(2) Unless respiratory protective equipment is used, as provided in Section R313-15-703, or the assessment of intake is based on bioassays, the licensee or registrant shall assume that an individual inhales radioactive material at the airborne concentration in which the individual is present.

(3) When specific information on the physical and biochemical properties of the radionuclides taken into the body or the behavior of the material in an individual is known, the licensee or registrant may:

(a) Use that information to calculate the committed effective dose equivalent, and, if used, the licensee or registrant shall document that information in the individual's record; and

(b) Upon prior approval of the Executive Secretary, adjust the DAC or ALI values to reflect the actual physical and chemical characteristics of airborne radioactive material, for example, aerosol size distribution or density; and

(c) Separately assess the contribution of fractional intakes of Class D, W, or Y compounds of a given radionuclide to the committed effective dose equivalent. See Appendix B of 10

CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference.

(4) If the licensee or registrant chooses to assess intakes of Class Y material using the measurements given in Subsections R313-15-204(1)(b) or R313-15-204(1)(c), the licensee or registrant may delay the recording and reporting of the assessments for periods up to seven months, unless otherwise required by Section R313-15-1202 or Section R313-15-1203. This delay permits the licensee or registrant to make additional measurements basic to the assessments.

(5) If the identity and concentration of each radionuclide in a mixture are known, the fraction of the DAC applicable to the mixture for use in calculating DAC-hours shall be either:

(a) The sum of the ratios of the concentration to the appropriate DAC value, that is, D, W, or Y, from Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference, for each radionuclide in the mixture; or

(b) The ratio of the total concentration for all radionuclides in the mixture to the most restrictive DAC value for any radionuclide in the mixture.

(6) If the identity of each radionuclide in a mixture is known, but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of any radionuclide in the mixture.

(7) When a mixture of radionuclides in air exists, a licensee or registrant may disregard certain radionuclides in the mixture if:

(a) The licensee or registrant uses the total activity of the mixture in demonstrating compliance with the dose limits in Section R313-15-201 and in complying with the monitoring requirements in Subsection R313-15-502(2), and

(b) The concentration of any radionuclide disregarded is less than ten percent of its DAC, and

(c) The sum of these percentages for all of the radionuclides disregarded in the mixture does not exceed 30 percent.

(8) When determining the committed effective dose equivalent, the following information may be considered:

(a) In order to calculate the committed effective dose equivalent, the licensee or registrant may assume that the inhalation of one ALI, or an exposure of 2,000 DAC-hours, results in a committed effective dose equivalent of 0.05 Sv (5 rem) for radionuclides that have their ALIs or DACs based on the committed effective dose equivalent.

(b) For an ALI and the associated DAC determined by the nonstochastic organ dose limit of 0.50 Sv (50 rem), the intake of radionuclides that would result in a committed effective dose equivalent of 0.05 Sv (5 rem), that is, the stochastic ALI, is listed in parentheses in Table I of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference. The licensee or registrant may, as a simplifying assumption, use the stochastic ALI to determine committed effective dose equivalent. However, if the licensee or registrant uses the stochastic ALI, the licensee or registrant shall also demonstrate that the limit in Subsection R313-15-201(1)(a)(ii) is met.

R313-15-205. Determination of Prior Occupational Dose.

(1) For each individual likely to receive, in a year, an occupational dose requiring monitoring pursuant to Section R313-15-502, the licensee or registrant shall:

(a) Determine the occupational radiation dose received during the current year; and

(b) Attempt to obtain the records of cumulative occupational radiation dose. A licensee or registrant may accept, as the record of cumulative radiation dose, an up-to-date form DRC-05 or equivalent, signed by the individual and countersigned by an appropriate official of the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant.

(2) Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant shall determine:

(a) The internal and external doses from all previous planned special exposures; and

(b) All doses in excess of the limits, including doses received during accidents and emergencies, received during the lifetime of the individual.

(3) In complying with the requirements of Subsection R313-15-205(1), a licensee or registrant may:

(a) Accept, as a record of the occupational dose that the individual received during the current year, a written signed statement from the individual, or from the individual's most recent employer for work involving radiation exposure, that discloses the nature and the amount of any occupational dose that the individual received during the current year; and

(b) Obtain reports of the individual's dose equivalents from the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant, by telephone, telegram, facsimile, other electronic media or letter. The licensee or registrant shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.

(4) The licensee or registrant shall record the exposure history, as required by Subsection R313-15-205(1), on form DRC-05, or other clear and legible record, of all the information required on that form.

(a) The form or record shall show each period in which the individual received occupational exposure to radiation or radioactive material and shall be signed by the individual who received the exposure. For each period for which the licensee or registrant obtains reports, the licensee or registrant shall use the dose shown in the report in preparing form DRC-05 or equivalent. For any period in which the licensee or registrant does not obtain a report, the licensee or registrant shall place a notation on form DRC-05 or equivalent indicating the periods of time for which data are not available.

(b) For the purpose of complying with this requirement, licensees or registrants are not required to reevaluate the separate external dose equivalents and internal committed dose equivalents or intakes of radionuclides assessed pursuant to the rules in Rule R313-15 in effect before January 1, 1994. Further, occupational exposure histories obtained and recorded on form DRC-05 or equivalent before January 1, 1994, would not have included effective dose equivalent, but may be used in the

absence of specific information on the intake of radionuclides by the individual.

(5) If the licensee or registrant is unable to obtain a complete record of an individual's current and previously accumulated occupational dose, the licensee or registrant shall assume:

(a) In establishing administrative controls under Subsection R313-15-201(6) for the current year, that the allowable dose limit for the individual is reduced by 12.5 mSv (1.25 rem) for each quarter for which records were unavailable and the individual was engaged in activities that could have resulted in occupational radiation exposure; and

(b) That the individual is not available for planned special exposures.

(6) The licensee or registrant shall retain the records on form DRC-05 or equivalent until the Executive Secretary terminates each pertinent license or registration requiring this record. The licensee or registrant shall retain records used in preparing form DRC-05 or equivalent for three years after the record is made.

R313-15-206. Planned Special Exposures.

A licensee or registrant may authorize an adult worker to receive doses in addition to and accounted for separately from the doses received under the limits specified in Section R313-15-201 provided that each of the following conditions is satisfied:

(1) The licensee or registrant authorizes a planned special exposure only in an exceptional situation when alternatives that might avoid the higher exposure are unavailable or impractical.

(2) The licensee or registrant, and employer if the employer is not the licensee or registrant, specifically authorizes the planned special exposure, in writing, before the exposure occurs.

(3) Before a planned special exposure, the licensee or registrant ensures that each individual involved is:

(a) Informed of the purpose of the planned operation; and

(b) Informed of the estimated doses and associated potential risks and specific radiation levels or other conditions that might be involved in performing the task; and

(c) Instructed in the measures to be taken to keep the dose ALARA considering other risks that may be present.

(4) Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant ascertains prior doses as required by Subsection R313-15-205(2) during the lifetime of the individual for each individual involved.

(5) Subject to Subsection R313-15-201(2), the licensee or registrant shall not authorize a planned special exposure that would cause an individual to receive a dose from all planned special exposures and all doses in excess of the limits to exceed:

(a) The numerical values of any of the dose limits in Subsection R313-15-201(1) in any year; and

(b) Five times the annual dose limits in Subsection R313-15-201(1) during the individual's lifetime.

(6) The licensee or registrant maintains records of the conduct of a planned special exposure in accordance with Section R313-15-1106 and submits a written report in accordance with Section R313-15-1204.

(7) The licensee or registrant records the best estimate of the dose resulting from the planned special exposure in the individual's record and informs the individual, in writing, of the dose within 30 days from the date of the planned special exposure. The dose from planned special exposures shall not be considered in controlling future occupational dose of the individual pursuant to Subsection R313-15-201(1) but shall be included in evaluations required by Subsections R313-15-206(4) and R313-15-206(5).

R313-15-207. Occupational Dose Limits for Minors.

The annual occupational dose limits for minors are ten percent of the annual occupational dose limits specified for adult workers in Section R313-15-201.

R313-15-208. Dose to an Embryo/Fetus.

(1) The licensee or registrant shall ensure that the dose to an embryo/fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed five mSv (0.5 rem). See Section R313-15-1107 for recordkeeping requirements.

(2) The licensee or registrant shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman so as to satisfy the limit in Subsection R313-15-208(1).

(3) The dose to an embryo/fetus shall be taken as the sum of:

(a) The dose to the embryo/fetus from radionuclides in the embryo/fetus and radionuclides in the declared pregnant woman; and

(b) The dose that is most representative of the dose to the embryo/fetus from external radiation, that is, in the mother's lower torso region.

(i) If multiple measurements have not been made, assignment of the highest deep dose equivalent for the declared pregnant woman shall be the dose to the embryo/fetus, in accordance with Subsection R313-15-201(3); or

(ii) If multiple measurements have been made, assignment of the deep dose equivalent for the declared pregnant woman from the individual monitoring device which is most representative of the dose to the embryo/fetus shall be the dose to the embryo fetus. Assignment of the highest deep dose equivalent for the declared pregnant woman to the embryo/fetus is not required unless that dose is also the most representative deep dose equivalent for the region of the embryo/fetus.

(4) If by the time the woman declares pregnancy to the licensee or registrant, the dose to the embryo/fetus has exceeded 4.5 mSv (0.45 rem) the licensee or registrant shall be deemed to be in compliance with Subsection R313-15-208(1) if the additional dose to the embryo/fetus does not exceed 0.50 mSv (0.05 rem) during the remainder of the pregnancy.

R313-15-301. Dose Limits for Individual Members of the Public.

(1) Each licensee or registrant shall conduct operations so that:

(a) Except as provided in Subsection R313-15-301(1)(c), the total effective dose equivalent to individual members of the public from the licensed or registered operation does not exceed one mSv (0.1 rem) in a year, exclusive of the dose contribution

from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with Section R313-32-75, from voluntary participation in medical research programs, and from the licensee's or registrant's disposal of radioactive material into sanitary sewerage in accordance with Section R313-15-1003; and

(b) The dose in any unrestricted area from external sources, exclusive of the dose contributions from patients administered radioactive material and released in accordance with Section R313-32-75, does not exceed 0.02 mSv (0.002 rem) in any one hour; and

(c) The total effective dose equivalent to individual members of the public from infrequent exposure to radiation from radiation machines does not exceed 5 mSv (0.5 rem) in a year.

(2) If the licensee or registrant permits members of the public to have access to controlled areas, the limits for members of the public continue to apply to those individuals.

(3) A licensee, registrant, or an applicant for a license or registration may apply for prior Executive Secretary authorization to operate up to an annual dose limit for an individual member of the public of five mSv (0.5 rem). This application shall include the following information:

(a) Demonstration of the need for and the expected duration of operations in excess of the limit in Subsection R313-15-301(1); and

(b) The licensee's or registrant's program to assess and control dose within the five mSv (0.5 rem) annual limit; and

(c) The procedures to be followed to maintain the dose ALARA.

(4) The Executive Secretary may impose additional restrictions on radiation levels in unrestricted areas and on the total quantity of radionuclides that a licensee or registrant may release in effluents in order to restrict the collective dose.

R313-15-302. Compliance with Dose Limits for Individual Members of the Public.

(1) The licensee or registrant shall make or cause to be made surveys of radiation levels in unrestricted and controlled areas and radioactive materials in effluents released to unrestricted and controlled areas to demonstrate compliance with the dose limits for individual members of the public in Section R313-15-301.

(2) A licensee or registrant shall show compliance with the annual dose limit in Section R313-15-301 by:

(a) Demonstrating by measurement or calculation that the total effective dose equivalent to the individual likely to receive the highest dose from the licensed or registered operation does not exceed the annual dose limit; or

(b) Demonstrating that:

(i) The annual average concentrations of radioactive material released in gaseous and liquid effluents at the boundary of the unrestricted area do not exceed the values specified in Table II of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference; and

(ii) If an individual were continuously present in an unrestricted area, the dose from external sources would not exceed 0.02 mSv (0.002 rem) in an hour and 0.50 mSv (0.05 rem) in a year.

(3) Upon approval from the Executive Secretary, the licensee or registrant may adjust the effluent concentration values in Appendix B, Table II of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference, for members of the public, to take into account the actual physical and chemical characteristics of the effluents, such as, aerosol size distribution, solubility, density, radioactive decay equilibrium, and chemical form.

R313-15-401. Testing for Leakage or Contamination of Sealed Sources.

(1) The licensee or registrant in possession of any sealed source shall assure that:

(a) Each sealed source, except as specified in Subsection R313-15-401(2), is tested for leakage or contamination and the test results are received before the sealed source is put into use unless the licensee or registrant has a certificate from the transferor indicating that the sealed source was tested within six months before transfer to the licensee or registrant.

(b) Each sealed source that is not designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed six months or at alternative intervals approved by the Executive Secretary, an Agreement State, a Licensing State, or the U.S. Nuclear Regulatory Commission.

(c) Each sealed source that is designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed three months or at alternative intervals approved by the Executive Secretary, an Agreement State, a Licensing State, or the Nuclear Regulatory Commission.

(d) For each sealed source that is required to be tested for leakage or contamination, at any other time there is reason to suspect that the sealed source might have been damaged or might be leaking, the licensee or registrant shall assure that the sealed source is tested for leakage or contamination before further use.

(e) Tests for leakage for all sealed sources, except brachytherapy sources manufactured to contain radium, shall be capable of detecting the presence of 185 Bq (0.005 uCi) of radioactive material on a test sample. Test samples shall be taken from the sealed source or from the surfaces of the container in which the sealed source is stored or mounted on which one might expect contamination to accumulate. For a sealed source contained in a device, test samples are obtained when the source is in the "off" position.

(f) The test for leakage for brachytherapy sources manufactured to contain radium shall be capable of detecting an absolute leakage rate of 37 Bq (0.001 uCi) of radon-222 in a 24 hour period when the collection efficiency for radon-222 and its daughters has been determined with respect to collection method, volume and time.

(g) Tests for contamination from radium daughters shall be taken on the interior surface of brachytherapy source storage containers and shall be capable of detecting the presence of 185 Bq (0.005 uCi) of a radium daughter which has a half-life greater than four days.

(2) A licensee or registrant need not perform tests for leakage or contamination on the following sealed sources:

(a) Sealed sources containing only radioactive material

with a half-life of less than 30 days;

(b) Sealed sources containing only radioactive material as a gas;

(c) Sealed sources containing 3.7 MBq (100 uCi) or less of beta or photon-emitting material or 370 kBq (ten uCi) or less of alpha-emitting material;

(d) Sealed sources containing only hydrogen-3;

(e) Seeds of iridium-192 encased in nylon ribbon; and

(f) Sealed sources, except teletherapy and brachytherapy sources, which are stored, not being used and identified as in storage. The licensee or registrant shall, however, test each such sealed source for leakage or contamination and receive the test results before any use or transfer unless it has been tested for leakage or contamination within six months before the date of use or transfer.

(3) Tests for leakage or contamination from sealed sources shall be performed by persons specifically authorized by the Executive Secretary, an Agreement State, a Licensing State, or the U.S. Nuclear Regulatory Commission to perform such services.

(4) Test results shall be kept in units of becquerel or microcurie and maintained for inspection by representatives of the Executive Secretary. Records of test results for sealed sources shall be made pursuant to Section R313-15-1104.

(5) The following shall be considered evidence that a sealed source is leaking:

(a) The presence of 185 Bq (0.005 uCi) or more of removable contamination on any test sample.

(b) Leakage of 37 Bq (0.001 uCi) of radon-222 per 24 hours for brachytherapy sources manufactured to contain radium.

(c) The presence of removable contamination resulting from the decay of 185 Bq (0.005 uCi) or more of radium.

(6) The licensee or registrant shall immediately withdraw a leaking sealed source from use and shall take action to prevent the spread of contamination. The leaking sealed source shall be repaired or disposed of in accordance with Rule R313-15.

(7) Reports of test results for leaking or contaminated sealed sources shall be made pursuant to Section R313-15-1208.

R313-15-501. Surveys and Monitoring - General.

(1) Each licensee or registrant shall make, or cause to be made, surveys that:

(a) Are necessary for the licensee or registrant to comply with Rule R313-15; and

(b) Are necessary under the circumstances to evaluate:

(i) Radiation levels; and

(ii) Concentrations or quantities of radioactive material; and

(iii) The potential radiological hazards that could be present.

(2) The licensee or registrant shall ensure that instruments and equipment used for quantitative radiation measurements, for example, dose rate and effluent monitoring, are calibrated at intervals not to exceed 12 months for the radiation measured, except when a more frequent interval is specified in another applicable part of these rules or a license condition.

(3) All personnel dosimeters, except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to any extremity, that require processing to determine the radiation dose and that are used by licensees and registrants to comply with Section R313-15-201, with other applicable provisions of these rules, or with conditions specified in a license or registration shall be processed and evaluated by a dosimetry processor:

(a) Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology; and

(b) Approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

(4) The licensee or registrant shall ensure that adequate precautions are taken to prevent a deceptive exposure of an individual monitoring device.

R313-15-502. Conditions Requiring Individual Monitoring of External and Internal Occupational Dose.

Each licensee or registrant shall monitor exposures from sources of radiation at levels sufficient to demonstrate compliance with the occupational dose limits of Rule R313-15. As a minimum:

(1) Each licensee or registrant shall monitor occupational exposure to radiation and shall supply and require the use of individual monitoring devices by:

(a) Adults likely to receive, in one year from sources external to the body, a dose in excess of ten percent of the limits in Subsection R313-15-201(1); and

(b) Minors and declared pregnant women likely to receive, in one year from sources external to the body, a dose in excess of ten percent of any of the applicable limits in Sections R313-15-207 or R313-15-208; and

(c) Individuals entering a high or very high radiation area; and

(d) Individuals working with medical fluoroscopic equipment.

(i) An individual monitoring device used for the dose to an embryo/fetus of a declared pregnant woman, pursuant to Subsection R313-15-208(1), shall be located under the protective apron at the waist.

(A) If an individual monitoring device worn by a declared pregnant woman has a monthly reported dose equivalent value in excess of 0.5 mSv (50 mrem), the value to be used for determining the dose to the embryo/fetus, pursuant to Subsection R313-15-208(3)(a) for radiation from medical fluoroscopy, may be the value reported by the individual monitoring device worn at the waist underneath the protective apron which has been corrected for the potential overestimation of dose recorded by the monitoring device because of the overlying tissue of the pregnant individual. This correction shall be performed by a radiation safety officer of an institutional radiation safety committee, a qualified expert approved by the Board, or a representative of the Executive Secretary.

(ii) An individual monitoring device used for eye dose equivalent shall be located at the neck, or an unshielded location closer to the eye, outside the protective apron.

(iii) When only one individual monitoring device is used to determine the effective dose equivalent for external radiation pursuant to Subsection R313-15-201(3)(b), it shall be located at the neck outside the protective apron. When a second individual monitoring device is used, for the same purpose, it shall be located under the protective apron at the waist. Note: The second individual monitoring device is required for a declared pregnant woman.

(2) Each licensee or registrant shall monitor, to determine compliance with Section R313-15-204, the occupational intake of radioactive material by and assess the committed effective dose equivalent to:

(a) Adults likely to receive, in one year, an intake in excess of ten percent of the applicable ALI in Table I, Columns 1 and 2, of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference; and

(b) Minors and declared pregnant women likely to receive, in one year, a committed effective dose equivalent in excess of 0.50 mSv (0.05 rem).

R313-15-503. Location of Individual Monitoring Devices.

Each licensee or registrant shall ensure that individuals who are required to monitor occupational doses in accordance with Subsection R313-15-502(1) wear individual monitoring devices as follows:

(1) An individual monitoring device used for monitoring the dose to the whole body shall be worn at the unshielded location of the whole body likely to receive the highest exposure. When a protective apron is worn, the location of the individual monitoring device is typically at the neck (collar).

(2) An individual monitoring device used for monitoring the dose to an embryo/fetus of a declared pregnant woman, pursuant to Subsection R313-15-208(1), shall be located at the waist under any protective apron being worn by the woman.

(3) An individual monitoring device used for monitoring the eye dose equivalent, to demonstrate compliance with Subsection R313-15-201(1)(b)(i), shall be located at the neck (collar), outside any protective apron being worn by the monitored individual, or at an unshielded location closer to the eye.

(4) An individual monitoring device used for monitoring the dose to the extremities, to demonstrate compliance with Subsection R313-15-201(1)(b)(ii), shall be worn on the extremity likely to receive the highest exposure. Each individual monitoring device shall be oriented to measure the highest dose to the extremity being monitored.

R313-15-601. Control of Access to High Radiation Areas.

(1) The licensee or registrant shall ensure that each entrance or access point to a high radiation area has one or more of the following features:

(a) A control device that, upon entry into the area, causes the level of radiation to be reduced below that level at which an individual might receive a deep dose equivalent of one mSv (0.1 rem) in one hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates; or

(b) A control device that energizes a conspicuous visible or audible alarm signal so that the individual entering the high radiation area and the supervisor of the activity are made aware of the entry; or

(c) Entryways that are locked, except during periods when access to the areas is required, with positive control over each individual entry.

(2) In place of the controls required by Subsection R313-15-601(1) for a high radiation area, the licensee or registrant may substitute continuous direct or electronic surveillance that is capable of preventing unauthorized entry.

(3) The licensee or registrant may apply to the Executive Secretary for approval of alternative methods for controlling access to high radiation areas.

(4) The licensee or registrant shall establish the controls required by Subsections R313-15-601(1) and R313-15-601(3) in a way that does not prevent individuals from leaving a high radiation area.

(5) The licensee or registrant is not required to control each entrance or access point to a room or other area that is a high radiation area solely because of the presence of radioactive materials prepared for transport and packaged and labeled in accordance with the rules of the U.S. Department of Transportation provided that:

(a) The packages do not remain in the area longer than three days; and

(b) The dose rate at one meter from the external surface of any package does not exceed 0.1 mSv (0.01 rem) per hour.

(6) The licensee or registrant is not required to control entrance or access to rooms or other areas in hospitals solely because of the presence of patients containing radioactive material, provided that there are personnel in attendance who are taking the necessary precautions to prevent the exposure of individuals to radiation or radioactive material in excess of the established limits in Rule R313-15 and to operate within the ALARA provisions of the licensee's or registrant's radiation protection program.

(7) The registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a high radiation area as described in Section R313-15-601 if the registrant has met all the specific requirements for access and control specified in other applicable sections of these rules, such as, Rule R313-36 for industrial radiography, Rule R313-28 for x rays in the healing arts, Rule R313-30 for therapeutic radiation machines, and Rule R313-35 for industrial use of x-ray systems.

R313-15-602. Control of Access to Very High Radiation Areas.

(1) In addition to the requirements in Section R313-15-601, the licensee or registrant shall institute measures to ensure that an individual is not able to gain unauthorized or inadvertent access to areas in which radiation levels could be encountered at five Gy (500 rad) or more in one hour at one meter from a source of radiation or any surface through which the radiation penetrates. This requirement does not apply to rooms or areas in which diagnostic x-ray systems are the only source of radiation, or to non-self-shielded irradiators.

(2) The registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a very high radiation area as described in Subsection R313-15-602(1) if the registrant has met all the

specific requirements for access and control specified in other applicable sections of these rules, such as, Rule R313-36 for industrial radiography, Rule R313-28 for x rays in the healing arts, Rule R313-30 for therapeutic radiation machines, and Rule R313-35 for industrial use of x-ray systems.

R313-15-603. Control of Access to Very High Radiation Areas -- Irradiators.

(1) Section R313-15-603 applies to licensees or registrants with sources of radiation in non-self-shielded irradiators. Section R313-15-603 does not apply to sources of radiation that are used in teletherapy, in industrial radiography, or in completely self-shielded irradiators in which the source of radiation is both stored and operated within the same shielding radiation barrier and, in the designed configuration of the irradiator, is always physically inaccessible to any individual and cannot create a high levels of radiation in an area that is accessible to any individual.

(2) Each area in which there may exist radiation levels in excess of five Gy (500 rad) in one hour at one meter from a source of radiation that is used to irradiate materials shall meet the following requirements:

(a) Each entrance or access point shall be equipped with entry control devices which:

(i) Function automatically to prevent any individual from inadvertently entering a very high radiation area; and

(ii) Permit deliberate entry into the area only after a control device is actuated that causes the radiation level within the area, from the source of radiation, to be reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour; and

(iii) Prevent operation of the source of radiation if it would produce radiation levels in the area that could result in a deep dose equivalent to an individual in excess of one mSv (0.1 rem) in one hour.

(b) Additional control devices shall be provided so that, upon failure of the entry control devices to function as required by Subsection R313-15-603(2)(a):

(i) The radiation level within the area, from the source of radiation, is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour; and

(ii) Conspicuous visible and audible alarm signals are generated to make an individual attempting to enter the area aware of the hazard and at least one other authorized individual, who is physically present, familiar with the activity, and prepared to render or summon assistance, aware of the failure of the entry control devices.

(c) The licensee or registrant shall provide control devices so that, upon failure or removal of physical radiation barriers other than the sealed source's shielded storage container:

(i) The radiation level from the source of radiation is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour; and

(ii) Conspicuous visible and audible alarm signals are generated to make potentially affected individuals aware of the hazard and the licensee or registrant or at least one other individual, who is familiar with the activity and prepared to render or summon assistance, aware of the failure or removal of the physical barrier.

(d) When the shield for stored sealed sources is a liquid, the licensee or registrant shall provide means to monitor the integrity of the shield and to signal, automatically, loss of adequate shielding.

(e) Physical radiation barriers that comprise permanent structural components, such as walls, that have no credible probability of failure or removal in ordinary circumstances need not meet the requirements of Subsections R313-15-603(2)(c) and R313-15-603(2)(d).

(f) Each area shall be equipped with devices that will automatically generate conspicuous visible and audible alarm signals to alert personnel in the area before the source of radiation can be put into operation and in time for any individual in the area to operate a clearly identified control device, which shall be installed in the area and which can prevent the source of radiation from being put into operation.

(g) Each area shall be controlled by use of such administrative procedures and such devices as are necessary to ensure that the area is cleared of personnel prior to each use of the source of radiation.

(h) Each area shall be checked by a radiation measurement to ensure that, prior to the first individual's entry into the area after any use of the source of radiation, the radiation level from the source of radiation in the area is below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour.

(i) The entry control devices required in Subsection R313-15-603(2)(a) shall be tested for proper functioning. See Section R313-15-1110 for recordkeeping requirements.

(i) Testing shall be conducted prior to initial operation with the source of radiation on any day, unless operations were continued uninterrupted from the previous day; and

(ii) Testing shall be conducted prior to resumption of operation of the source of radiation after any unintentional interruption; and

(iii) The licensee or registrant shall submit and adhere to a schedule for periodic tests of the entry control and warning systems.

(j) The licensee or registrant shall not conduct operations, other than those necessary to place the source of radiation in safe condition or to effect repairs on controls, unless control devices are functioning properly.

(k) Entry and exit portals that are used in transporting materials to and from the irradiation area, and that are not intended for use by individuals, shall be controlled by such devices and administrative procedures as are necessary to physically protect and warn against inadvertent entry by any individual through these portals. Exit portals for irradiated materials shall be equipped to detect and signal the presence of any loose radioactive material that is carried toward such an exit and automatically to prevent loose radioactive material from being carried out of the area.

(3) Licensees, registrants, or applicants for licenses or registrations for sources of radiation within the purview of Subsection R313-15-603(2) which will be used in a variety of positions or in locations, such as open fields or forests, that make it impractical to comply with certain requirements of

Subsection R313-15-603(2), such as those for the automatic control of radiation levels, may apply to the Executive Secretary for approval of alternative safety measures. Alternative safety measures shall provide personnel protection at least equivalent to those specified in Subsection R313-15-603(2). At least one of the alternative measures shall include an entry-preventing interlock control based on a measurement of the radiation that ensures the absence of high radiation levels before an individual can gain access to the area where such sources of radiation are used.

(4) The entry control devices required by Subsections R313-15-603(2) and R313-15-603(3) shall be established in such a way that no individual will be prevented from leaving the area.

R313-15-701. Use of Process or Other Engineering Controls.

The licensee or registrant shall use, to the extent practical, process or other engineering controls, such as, containment or ventilation, to control the concentrations of radioactive material in air.

R313-15-702. Use of Other Controls.

When it is not practical to apply process or other engineering controls to control the concentrations of radioactive material in air to values below those that define an airborne radioactivity area, the licensee or registrant shall, consistent with maintaining the total effective dose equivalent ALARA, increase monitoring and limit intakes by one or more of the following means:

(1) Control of access; or

(2) Limitation of exposure times; or

(3) Use of respiratory protection equipment; or

(4) Other controls.

R313-15-703. Use of Individual Respiratory Protection Equipment.

(1) If the licensee or registrant uses respiratory protection equipment to limit intakes pursuant to Section R313-15-702:

(a) Except as provided in Subsection R313-15-703(1)(b), the licensee or registrant shall use only respiratory protection equipment that is tested and certified or had certification extended by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration.

(b) The licensee or registrant may use equipment that has not been tested or certified by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration, has not had certification extended by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration, or for which there is no schedule for testing or certification, provided the licensee or registrant has submitted to the Executive Secretary and the Executive Secretary has approved an application for authorized use of that equipment, including a demonstration by testing, or a demonstration on the basis of test information, that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use.

(c) The licensee or registrant shall implement and maintain a respiratory protection program that includes:

(i) Air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate exposures; and

(ii) Surveys and bioassays, as appropriate, to evaluate actual intakes; and

(iii) Testing of respirators for operability immediately prior to each use; and

(iv) Written procedures regarding selection, fitting, issuance, maintenance, and testing of respirators, including testing for operability immediately prior to each use; supervision and training of personnel; monitoring, including air sampling and bioassays; and recordkeeping; and

(v) Determination by a physician prior to initial fitting of respirators, and either every 12 months thereafter or periodically at a frequency determined by a physician, that the individual user is medically fit to use the respiratory protection equipment.

(d) The licensee or registrant shall issue a written policy statement on respirator usage covering:

(i) The use of process or other engineering controls, instead of respirators; and

(ii) The routine, nonroutine, and emergency use of respirators; and

(iii) The length of periods of respirator use and relief from respirator use.

(e) The licensee or registrant shall advise each respirator user that the user may leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions, or any other conditions that might require such relief.

(f) The licensee or registrant shall use respiratory protection equipment within the equipment manufacturer's expressed limitations for type and mode of use and shall provide proper visual, communication, and other special capabilities, such as adequate skin protection, when needed.

(2) When estimating exposure of individuals to airborne radioactive materials, the licensee or registrant may make allowance for respiratory protection equipment used to limit intakes pursuant to Section R313-15-702, provided that the following conditions, in addition to those in Subsection R313-15-703(1), are satisfied:

(a) The licensee or registrant selects respiratory protection equipment that provides a protection factor, specified in Appendix A of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference, greater than the multiple by which peak concentrations of airborne radioactive materials in the working area are expected to exceed the values specified in Appendix B, Table I, Column 3 of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference. However, if the selection of respiratory protection equipment with a protection factor greater than the multiple defined in the preceding sentence is inconsistent with the goal specified in Section R313-15-702 of keeping the total effective dose equivalent ALARA, the licensee or registrant may select respiratory protection equipment with a lower protection factor provided that such a selection would result in a total effective dose equivalent that is ALARA. The concentration of radioactive material in the air that is inhaled when respirators are worn may be initially estimated by dividing the average concentration in air, during each period of uninterrupted use, by the protection factor. If the

exposure is later found to be greater than initially estimated, the corrected value shall be used; if the exposure is later found to be less than initially estimated, the corrected value may be used.

(b) The licensee or registrant shall obtain authorization from the Executive Secretary before assigning respiratory protection factors in excess of those specified in Appendix A of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference. The Executive Secretary may authorize a licensee or registrant to use higher protection factors on receipt of an application that:

(i) Describes the situation for which a need exists for higher protection factors, and

(ii) Demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

(3) In an emergency, the licensee or registrant shall use as emergency equipment only respiratory protection equipment that has been specifically certified or had certification extended for emergency use by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration.

(4) The licensee or registrant shall notify the Executive Secretary in writing at least 30 days before the date that respiratory protection equipment is first used pursuant to either Subsections R313-15-703(1) or R313-15-703(2).

R313-15-801. Security and Control of Licensed or Registered Sources of Radiation.

(1) The licensee or registrant shall secure licensed or registered radioactive material from unauthorized removal or access.

(2) The licensee or registrant shall maintain constant surveillance, and use devices or administrative procedures to prevent unauthorized use of licensed or registered radioactive material that is in an unrestricted area and that is not in storage.

(3) The registrant shall secure registered radiation machines from unauthorized removal.

(4) The registrant shall use devices or administrative procedures to prevent unauthorized use of registered radiation machines.

R313-15-901. Caution Signs.

(1) Standard Radiation Symbol. Unless otherwise authorized by the Executive Secretary, the symbol prescribed by 10 CFR 20.1901, 1997 ed., which is incorporated by reference, shall use the colors magenta, or purple, or black on yellow background. The symbol prescribed is the three-bladed design as follows:

(a) Cross-hatched area is to be magenta, or purple, or black, and

(b) The background is to be yellow.

(2) Exception to Color Requirements for Standard Radiation Symbol. Notwithstanding the requirements of 10 CFR 20.1901a, 1997 ed., which is incorporated by reference, licensees or registrants are authorized to label sources, source holders, or device components containing sources of radiation that are subjected to high temperatures, with conspicuously etched or stamped radiation caution symbols and without a color requirement.

(3) Additional Information on Signs and Labels. In addition to the contents of signs and labels prescribed in Rule R313-15, the licensee or registrant shall provide, on or near the required signs and labels, additional information, as appropriate, to make individuals aware of potential radiation exposures and to minimize the exposures.

R313-15-902. Posting Requirements.

(1) Posting of Radiation Areas. The licensee or registrant shall post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIATION AREA."

(2) Posting of High Radiation Areas. The licensee or registrant shall post each high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA."

(3) Posting of Very High Radiation Areas. The licensee or registrant shall post each very high radiation area with a conspicuous sign or signs bearing the radiation symbol and words "GRAVE DANGER, VERY HIGH RADIATION AREA."

(4) Posting of Airborne Radioactivity Areas. The licensee or registrant shall post each airborne radioactivity area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, AIRBORNE RADIOACTIVITY AREA" or "DANGER, AIRBORNE RADIOACTIVITY AREA."

(5) Posting of Areas or Rooms in which Licensed or Registered Material is Used or Stored. The licensee or registrant shall post each area or room in which there is used or stored an amount of licensed or registered material exceeding ten times the quantity of such material specified in Appendix C of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference, with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL."

R313-15-903. Exceptions to Posting Requirements.

(1) A licensee or registrant is not required to post caution signs in areas or rooms containing sources of radiation for periods of less than eight hours, if each of the following conditions is met:

(a) The sources of radiation are constantly attended during these periods by an individual who takes the precautions necessary to prevent the exposure of individuals to sources of radiation in excess of the limits established in Rule R313-15; and

(b) The area or room is subject to the licensee's or registrant's control.

(2) Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs pursuant to Section R313-15-902 provided that the patient could be released from licensee control pursuant to Section R313-32-75.

(3) A room or area is not required to be posted with a caution sign because of the presence of a sealed source provided the radiation level at 30 centimeters from the surface of the sealed source container or housing does not exceed 0.05 mSv (0.005 rem) per hour.

(4) A room or area is not required to be posted with a

caution sign because of the presence of radiation machines used solely for diagnosis in the healing arts.

R313-15-904. Labeling Containers and Radiation Machines.

(1) The licensee or registrant shall ensure that each container of licensed or registered material bears a durable, clearly visible label bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL." The label shall also provide information, such as the radionuclides present, an estimate of the quantity of radioactivity, the date for which the activity is estimated, radiation levels, kinds of materials, and mass enrichment, to permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures.

(2) Each licensee or registrant shall, prior to removal or disposal of empty uncontaminated containers to unrestricted areas, remove or deface the radioactive material label or otherwise clearly indicate that the container no longer contains radioactive materials.

(3) Each registrant shall ensure that each radiation machine is labeled in a conspicuous manner which cautions individuals that radiation is produced when it is energized.

R313-15-905. Exemptions to Labeling Requirements.

A licensee or registrant is not required to label:

(1) Containers holding licensed or registered material in quantities less than the quantities listed in Appendix C of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference; or

(2) Containers holding licensed or registered material in concentrations less than those specified in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference; or

(3) Containers attended by an individual who takes the precautions necessary to prevent the exposure of individuals in excess of the limits established by Rule R313-15; or

(4) Containers when they are in transport and packaged and labeled in accordance with the rules of the U.S. Department of Transportation; or

(5) Containers that are accessible only to individuals authorized to handle or use them, or to work in the vicinity of the containers, if the contents are identified to these individuals by a readily available written record. Examples of containers of this type are containers in locations such as water-filled canals, storage vaults, or hot cells. The record shall be retained as long as the containers are in use for the purpose indicated on the record; or

(6) Installed manufacturing or process equipment, such as piping and tanks.

R313-15-906. Procedures for Receiving and Opening Packages.

(1) Each licensee or registrant who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity, as used in Section R313-19-100, which incorporates 10 CFR 71.4 by reference, shall make arrangements to receive:

(a) The package when the carrier offers it for delivery; or

(b) The notification of the arrival of the package at the carrier's terminal and to take possession of the package expeditiously.

(2) Each licensee or registrant shall:

(a) Monitor the external surfaces of a labeled package for radioactive contamination unless the package contains only radioactive material in the form of gas or in special form as defined in Section R313-12-3; and

(b) Monitor the external surfaces of a labeled package for radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, as used in Section R313-19-100, which incorporates 10 CFR 71.4 by reference; and

(c) Monitor all packages known to contain radioactive material for radioactive contamination and radiation levels if there is evidence of degradation of package integrity, such as packages that are crushed, wet, or damaged.

(3) The licensee or registrant shall perform the monitoring required by Subsection R313-15-906(2) as soon as practical after receipt of the package, but not later than three hours after the package is received at the licensee's or registrant's facility if it is received during the licensee's or registrant's normal working hours or if there is evidence of degradation of package integrity, such as a package that is crushed, wet, or damaged. If a package is received after working hours, and has no evidence of degradation of package integrity, the package shall be monitored no later than three hours from the beginning of the next working day.

(4) The licensee or registrant shall immediately notify the final delivery carrier and, by telephone and telegram, mailgram, or facsimile, the Executive Secretary when:

(a) Removable radioactive surface contamination exceeds the limits of Section R313-19-100 which incorporates 10 CFR 71.87(i) by reference; or

(b) External radiation levels exceed the limits of Section R313-19-100 which incorporates 10 CFR 71.47 by reference.

(5) Each licensee or registrant shall:

(a) Establish, maintain, and retain written procedures for safely opening packages in which radioactive material is received; and

(b) Ensure that the procedures are followed and that due consideration is given to special instructions for the type of package being opened.

(6) Licensees or registrants transferring special form sources in vehicles owned or operated by the licensee or registrant to and from a work site are exempt from the contamination monitoring requirements of Subsection R313-15-906(2), but are not exempt from the monitoring requirement in Subsection R313-15-906(2) for measuring radiation levels that ensures that the source is still properly lodged in its shield.

R313-15-1001. Waste Disposal - General Requirements.

(1) A licensee or registrant shall dispose of licensed or registered material only:

(a) By transfer to an authorized recipient as provided in Section R313-15-1006 or in Rules R313-21, R313-22, or R313-25, or to the U.S. Department of Energy; or

(b) By decay in storage; or

(c) By release in effluents within the limits in Section

R313-15-301; or

(d) As authorized pursuant to Sections R313-15-1002, R313-15-1003, R313-15-1004, or R313-15-1005.

(2) A person shall be specifically licensed or registered to receive waste containing licensed or registered material from other persons for:

(a) Treatment prior to disposal; or

(b) Treatment or disposal by incineration; or

(c) Decay in storage; or

(d) Disposal at a land disposal facility licensed pursuant to Rule R313-25; or

(e) Storage until transferred to a storage or disposal facility authorized to receive the waste.

R313-15-1002. Method for Obtaining Approval of Proposed Disposal Procedures.

A licensee or registrant or applicant for a license or registration may apply to the Executive Secretary for approval of proposed procedures, not otherwise authorized in these rules, to dispose of licensed or registered material generated in the licensee's or registrant's operations. Each application shall include:

(1) A description of the waste containing licensed or registered material to be disposed of, including the physical and chemical properties that have an impact on risk evaluation, and the proposed manner and conditions of waste disposal; and

(2) An analysis and evaluation of pertinent information on the nature of the environment; and

(3) The nature and location of other potentially affected facilities; and

(4) Analyses and procedures to ensure that doses are maintained ALARA and within the dose limits in Rule R313-15.

R313-15-1003. Disposal by Release into Sanitary Sewerage.

(1) A licensee or registrant may discharge licensed or registered material into sanitary sewerage if each of the following conditions is satisfied:

(a) The material is readily soluble, or is readily dispersible biological material, in water; and

(b) The quantity of licensed or registered radioactive material that the licensee or registrant releases into the sewer in one month divided by the average monthly volume of water released into the sewer by the licensee or registrant does not exceed the concentration listed in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference; and

(c) If more than one radionuclide is released, the following conditions shall also be satisfied:

(i) The licensee or registrant shall determine the fraction of the limit in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference, represented by discharges into sanitary sewerage by dividing the actual monthly average concentration of each radionuclide released by the licensee or registrant into the sewer by the concentration of that radionuclide listed in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference; and

(ii) The sum of the fractions for each radionuclide required by Subsection R313-15-1003(1)(c)(i) does not exceed unity; and

(d) The total quantity of licensed or registered radioactive material that the licensee or registrant releases into the sanitary sewerage system in a year does not exceed 185 GBq (five Ci) of hydrogen-3, 37 GBq (one Ci) of carbon-14, and 37 GBq (one Ci) of all other radioactive materials combined.

(2) Excreta from individuals undergoing medical diagnosis or therapy with radioactive material are not subject to the limitations contained in Subsection R313-15-1003(1).

R313-15-1004. Treatment or Disposal by Incineration.

A licensee or registrant may treat or dispose of licensed or registered material by incineration only in the form and concentration specified in Section R313-15-1005 or as specifically approved by the Executive Secretary pursuant to Section R313-15-1002.

R313-15-1005. Disposal of Specific Wastes.

(1) A licensee or registrant may dispose of the following licensed or registered material as if it were not radioactive:

(a) 1.85 kBq (0.05 uCi), or less, of hydrogen-3 or carbon-14 per gram of medium used for liquid scintillation counting; and

(b) 1.85 kBq (0.05 uCi) or less, of hydrogen-3 or carbon-14 per gram of animal tissue, averaged over the weight of the entire animal.

(2) A licensee or registrant shall not dispose of tissue pursuant to Subsection R313-15-1005(1)(b) in a manner that would permit its use either as food for humans or as animal feed.

(3) The licensee or registrant shall maintain records in accordance with Section R313-15-1109.

R313-15-1006. Transfer for Disposal and Manifests.

(1) Requirements of Section R313-15-1006 and Appendix F and G of 10 CFR 20.1001 to 20.2402, 1997 ed.

(a) The requirements of Section R313-15-1006 and Appendix F and G of 10 CFR 20.1001 to 20.2402, 1997 ed., which are incorporated into these rules by reference, are designed to:

(i) control transfers of low-level radioactive waste by any waste generator, waste collector, or waste processor licensee, as defined in Appendix F or G in 10 CFR 20.1001 to 20.2402, 1997 ed., who ships low-level waste either directly, or indirectly through a waste collector or waste processor, to a licensed low-level waste land disposal facility as defined in Section R313-25-2;

(ii) establish a manifest tracking system; and

(iii) supplement existing requirements concerning transfers and recordkeeping for those wastes.

(b) Beginning March 1, 1998, all affected licensees must use Appendix G of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated into these rules by reference. Prior to March 1, 1998, a low-level waste disposal facility operator or its regulatory authority may require the shipper to use Appendix F or Appendix G of 10 CFR 20.1001 to 20.2402, 1997 ed. Licensees using Appendix F shall comply with Subsection R313-15-1006(2)(a). Licensees using Appendix G shall comply with Subsection R313-15-1006(2)(b).

(2) Shipment of Radioactive Waste.

(a) Each shipment of radioactive waste designated for disposal at a licensed low-level radioactive waste disposal facility shall be accompanied by a shipment manifest as specified in Section I of Appendix F of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference.

(b) Any licensee shipping radioactive waste intended for ultimate disposal at a licensed land disposal facility must document the information required on the U.S. Nuclear Regulatory Commission's Uniform Low-Level Radioactive Waste Manifest and transfer this recorded information to the intended consignee in accordance with Appendix G to 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated into these rules by reference.

(3) Each shipment manifest shall include a certification by the waste generator as specified in Section II of Appendix F or G, as appropriate, of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference. See Subsection R313-15-1006(1)(b) to determine the appropriate Appendix.

(4) Each person involved in the transfer of waste for disposal or in the disposal of waste, including the waste generator, waste collector, waste processor, and disposal facility operator, shall comply with the requirements specified in Section III of Appendix F or G, as appropriate, of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference. See Subsection R313-15-1006(1)(b) to determine the appropriate Appendix.

R313-15-1007. Compliance with Environmental and Health Protection Rules.

Nothing in Sections R313-15-1001, R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, or R313-15-1006 relieves the licensee or registrant from complying with other applicable Federal, State and local rules governing any other toxic or hazardous properties of materials that may be disposed of pursuant to Sections R313-15-1001, R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, or R313-15-1006.

R313-15-1008. Classification and Characteristics of Low-Level Radioactive Waste.

(1) Classification of Radioactive Waste for Land Disposal

(a) Considerations. Determination of the classification of radioactive waste involves two considerations. First, consideration shall be given to the concentration of long-lived radionuclides (and their shorter-lived precursors) whose potential hazard will persist long after such precautions as institutional controls, improved waste form, and deeper disposal have ceased to be effective. These precautions delay the time when long-lived radionuclides could cause exposures. In addition, the magnitude of the potential dose is limited by the concentration and availability of the radionuclide at the time of exposure. Second, consideration shall be given to the concentration of shorter-lived radionuclides for which requirements on institutional controls, waste form, and disposal methods are effective.

(b) Classes of waste.

(i) Class A waste is waste that is usually segregated from other waste classes at the disposal site. The physical form and characteristics of Class A waste shall meet the minimum requirements set forth in Subsection R313-15-1008(2)(a). If Class A waste also meets the stability requirements set forth in Subsection R313-15-1008(2)(b), it is not necessary to segregate the waste for disposal.

(ii) Class B waste is waste that shall meet more rigorous requirements on waste form to ensure stability after disposal. The physical form and characteristics of Class B waste shall meet both the minimum and stability requirements set forth in Subsection R313-15-1008(2).

(iii) Class C waste is waste that not only shall meet more rigorous requirements on waste form to ensure stability but also requires additional measures at the disposal facility to protect against inadvertent intrusion. The physical form and characteristics of Class C waste shall meet both the minimum and stability requirements set forth in Subsection R313-15-1008(2).

(c) Classification determined by long-lived radionuclides. If the radioactive waste contains only radionuclides listed in Table I, classification shall be determined as follows:

(i) If the concentration does not exceed 0.1 times the value in Table I, the waste is Class A.

(ii) If the concentration exceeds 0.1 times the value in Table I, but does not exceed the value in Table I, the waste is Class C.

(iii) If the concentration exceeds the value in Table I, the waste is not generally acceptable for land disposal.

(iv) For wastes containing mixtures of radionuclides listed in Table I, the total concentration shall be determined by the sum of fractions rule described in Subsection R313-15-1008(1)(g).

TABLE I

Radionuclide	Concentration curie/cubic meter(1)	nanocurie/gram(2)
C-14	8	
C-14 in activated metal	80	
Ni-59 in activated metal	220	
Nb-94 in activated metal	0.2	
Tc-99	3	
I-129	0.08	
Alpha emitting transuranic radionuclides with half-life greater than five years		100
Pu-241		3,500
Cm-242		20,000
Ra-226		100

NOTE: (1) To convert the Ci/m^3 values to gigabecquerel (GBq)/cubic meter, multiply the Ci/m^3 value by 37.
(2) To convert the nCi/g values to becquerel (Bq)/gram, multiply the nCi/g value by 37.

(d) Classification determined by short-lived radionuclides. If the waste does not contain any of the radionuclides listed in Table I, classification shall be determined based on the concentrations shown in Table II. However, as specified in Subsection R313-15-1008(1)(f), if radioactive waste does not contain any nuclides listed in either Table I or II, it is Class A.

(i) If the concentration does not exceed the value in Column 1, the waste is Class A.

(ii) If the concentration exceeds the value in Column 1 but does not exceed the value in Column 2, the waste is Class B.

(iii) If the concentration exceeds the value in Column 2

but does not exceed the value in Column 3, the waste is Class C.

(iv) If the concentration exceeds the value in Column 3, the waste is not generally acceptable for near-surface disposal.

(v) For wastes containing mixtures of the radionuclides listed in Table II, the total concentration shall be determined by the sum of fractions rule described in Subsection R313-15-1008(1)(g).

TABLE II

Radionuclide	Concentration, curie/cubic meter(1) Column 1	Column 2	Column 3
Total of all radionuclides with less than 5-year half-life	700	(2)	(2)
H-3	40	(2)	(2)
Co-60	700	(2)	(2)
Ni-63	3.5	70	700
Ni-63 in activated metal	35	700	7000
Sr-90	0.04	150	7000
Cs-137	1	44	4600

NOTE: (1) To convert the Ci/m^3 value to gigabecquerel (GBq)/cubic meter, multiply the Ci/m^3 value by 37.
(2) There are no limits established for these radionuclides in Class B or C wastes. Practical considerations such as the effects of external radiation and internal heat generation on transportation, handling, and disposal will limit the concentrations for these wastes. These wastes shall be Class B unless the concentrations of other radionuclides in Table II determine the waste to be Class C independent of these radionuclides.

(e) Classification determined by both long- and short-lived radionuclides. If the radioactive waste contains a mixture of radionuclides, some of which are listed in Table I and some of which are listed in Table II, classification shall be determined as follows:

(i) If the concentration of a radionuclide listed in Table I is less than 0.1 times the value listed in Table I, the class shall be that determined by the concentration of radionuclides listed in Table II.

(ii) If the concentration of a radionuclide listed in Table I exceeds 0.1 times the value listed in Table I, but does not exceed the value in Table I, the waste shall be Class C, provided the concentration of radionuclides listed in Table II does not exceed the value shown in Column 3 of Table II.

(f) Classification of wastes with radionuclides other than those listed in Tables I and II. If the waste does not contain any radionuclides listed in either Table I or II, it is Class A.

(g) The sum of the fractions rule for mixtures of radionuclides. For determining classification for waste that contains a mixture of radionuclides, it is necessary to determine the sum of fractions by dividing each radionuclide's concentration by the appropriate limit and adding the resulting values. The appropriate limits shall all be taken from the same column of the same table. The sum of the fractions for the column shall be less than 1.0 if the waste class is to be determined by that column. Example: A waste contains Sr-90 in a concentration of 1.85 TBq/m^3 (50 Ci/m^3) and Cs-137 in a concentration of 814 GBq/m^3 (22 Ci/m^3). Since the concentrations both exceed the values in Column 1, Table II, they shall be compared to Column 2 values. For Sr-90 fraction, 50/150 = 0.33., for Cs-137 fraction, 22/44 = 0.5; the sum of the fractions = 0.83. Since the sum is less than 1.0, the waste is Class B.

(h) Determination of concentrations in wastes. The concentration of a radionuclide may be determined by indirect methods such as use of scaling factors which relate the inferred concentration of one radionuclide to another that is measured, or radionuclide material accountability, if there is reasonable assurance that the indirect methods can be correlated with actual measurements. The concentration of a radionuclide may be averaged over the volume of the waste, or weight of the waste if the units are expressed as becquerel (nanocurie) per gram.

(2) Radioactive Waste Characteristics

(a) The following are minimum requirements for all classes of waste and are intended to facilitate handling and provide protection of health and safety of personnel at the disposal site.

(i) Wastes shall be packaged in conformance with the conditions of the license issued to the site operator to which the waste will be shipped. Where the conditions of the site license are more restrictive than the provisions of Rule R313-15, the site license conditions shall govern.

(ii) Wastes shall not be packaged for disposal in cardboard or fiberboard boxes.

(iii) Liquid waste shall be packaged in sufficient absorbent material to absorb twice the volume of the liquid.

(iv) Solid waste containing liquid shall contain as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed one percent of the volume.

(v) Waste shall not be readily capable of detonation or of explosive decomposition or reaction at normal pressures and temperatures, or of explosive reaction with water.

(vi) Waste shall not contain, or be capable of generating, quantities of toxic gases, vapors, or fumes harmful to persons transporting, handling, or disposing of the waste. This does not apply to radioactive gaseous waste packaged in accordance with Subsection R313-15-1008(2)(a)(viii).

(vii) Waste shall not be pyrophoric. Pyrophoric materials contained in wastes shall be treated, prepared, and packaged to be nonflammable.

(viii) Wastes in a gaseous form shall be packaged at an absolute pressure that does not exceed 1.5 atmospheres at 20 degrees celsius. Total activity shall not exceed 3.7 TBq (100 Ci) per container.

(ix) Wastes containing hazardous, biological, pathogenic, or infectious material shall be treated to reduce to the maximum extent practical the potential hazard from the non-radiological materials.

(b) The following requirements are intended to provide stability of the waste. Stability is intended to ensure that the waste does not degrade and affect overall stability of the site through slumping, collapse, or other failure of the disposal unit and thereby lead to water infiltration. Stability is also a factor in limiting exposure to an inadvertent intruder, since it provides a recognizable and nondispersible waste.

(i) Waste shall have structural stability. A structurally stable waste form will generally maintain its physical dimensions and its form, under the expected disposal conditions such as weight of overburden and compaction equipment, the presence of moisture, and microbial activity, and internal factors

such as radiation effects and chemical changes. Structural stability can be provided by the waste form itself, processing the waste to a stable form, or placing the waste in a disposal container or structure that provides stability after disposal.

(ii) Notwithstanding the provisions in Subsections R313-15-1008(2)(a)(iii) and R313-15-1008(2)(a)(iv), liquid wastes, or wastes containing liquid, shall be converted into a form that contains as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed one percent of the volume of the waste when the waste is in a disposal container designed to ensure stability, or 0.5 percent of the volume of the waste for waste processed to a stable form.

(iii) Void spaces within the waste and between the waste and its package shall be reduced to the extent practical.

(3) Labeling. Each package of waste shall be clearly labeled to identify whether it is Class A, Class B, or Class C waste, in accordance with Subsection R313-15-1008(1).

R313-15-1101. Records - General Provisions.

(1) Each licensee or registrant shall use the SI units becquerel, gray, sievert and coulomb per kilogram, or the special units, curie, rad, rem, and roentgen, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by Rule R313-15.

(2) Notwithstanding the requirements of Subsection R313-15-1101(1), when recording information on shipment manifests, as required in Subsection R313-15-1006(2), information must be recorded in SI units or in SI units and the special units specified in Subsection R313-15-1101(1).

(3) The licensee or registrant shall make a clear distinction among the quantities entered on the records required by Rule R313-15, such as, total effective dose equivalent, total organ dose equivalent, shallow dose equivalent, eye dose equivalent, deep dose equivalent, or committed effective dose equivalent.

R313-15-1102. Records of Radiation Protection Programs.

(1) Each licensee or registrant shall maintain records of the radiation protection program, including:

(a) The provisions of the program; and

(b) Audits and other reviews of program content and implementation.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1102(1)(a) until the Executive Secretary terminates each pertinent license or registration requiring the record. The licensee or registrant shall retain the records required by Subsection R313-15-1102(1)(b) for three years after the record is made.

R313-15-1103. Records of Surveys.

(1) Each licensee or registrant shall maintain records showing the results of surveys and calibrations required by Section R313-15-501 and Subsection R313-15-906(2). The licensee or registrant shall retain these records for three years after the record is made.

(2) The licensee or registrant shall retain each of the following records until the Executive Secretary terminates each pertinent license or registration requiring the record:

(a) Records of the results of surveys to determine the dose from external sources of radiation used, in the absence of or in combination with individual monitoring data, in the assessment of individual dose equivalents; and

(b) Records of the results of measurements and calculations used to determine individual intakes of radioactive material and used in the assessment of internal dose; and

(c) Records showing the results of air sampling, surveys, and bioassays required pursuant to Subsections R313-15-703(1)(c)(i) and R313-15-703(1)(c)(ii); and

(d) Records of the results of measurements and calculations used to evaluate the release of radioactive effluents to the environment.

R313-15-1104. Records of Tests for Leakage or Contamination of Sealed Sources.

Records of tests for leakage or contamination of sealed sources required by Section R313-15-401 shall be kept in units of becquerel or microcurie and maintained for inspection by the Executive Secretary for five years after the records are made.

R313-15-1105. Records of Prior Occupational Dose.

For each individual who is likely to receive in a year an occupational dose requiring monitoring pursuant to Section R313-15-502, the licensee or registrant shall retain the records of prior occupational dose and exposure history as specified in Section R313-15-205 on form DRC-05 or equivalent until the Executive Secretary terminates each pertinent license requiring this record. The licensee or registrant shall retain records used in preparing form DRC-05 or equivalent for three years after the record is made.

R313-15-1106. Records of Planned Special Exposures.

(1) For each use of the provisions of Section R313-15-206 for planned special exposures, the licensee or registrant shall maintain records that describe:

(a) The exceptional circumstances requiring the use of a planned special exposure; and

(b) The name of the management official who authorized the planned special exposure and a copy of the signed authorization; and

(c) What actions were necessary; and

(d) Why the actions were necessary; and

(e) What precautions were taken to assure that doses were maintained ALARA; and

(f) What individual and collective doses were expected to result; and

(g) The doses actually received in the planned special exposure.

(2) The licensee or registrant shall retain the records until the Executive Secretary terminates each pertinent license or registration requiring these records.

R313-15-1107. Records of Individual Monitoring Results.

(1) Recordkeeping Requirement. Each licensee or registrant shall maintain records of doses received by all individuals for whom monitoring was required pursuant to Section R313-15-502, and records of doses received during planned special exposures, accidents, and emergency conditions. Assessments of dose equivalent and records made using units in effect before January 1, 1994, need not be

changed. These records shall include, when applicable:

(a) The deep dose equivalent to the whole body, eye dose equivalent, shallow dose equivalent to the skin, and shallow dose equivalent to the extremities; and

(b) The estimated intake of radionuclides, see Section R313-15-202; and

(c) The committed effective dose equivalent assigned to the intake of radionuclides; and

(d) The specific information used to calculate the committed effective dose equivalent pursuant to Subsection R313-15-204(3); and

(e) The total effective dose equivalent when required by Section R313-15-202; and

(f) The total of the deep dose equivalent and the committed dose to the organ receiving the highest total dose.

(2) Recordkeeping Frequency. The licensee or registrant shall make entries of the records specified in Subsection R313-15-1107(1) at intervals not to exceed one year.

(3) Recordkeeping Format. The licensee or registrant shall maintain the records specified in Subsection R313-15-1107(1) on form DRC-06, in accordance with the instructions for form DRC-06, or in clear and legible records containing all the information required by form DRC-06.

(4) The licensee or registrant shall maintain the records of dose to an embryo/fetus with the records of dose to the declared pregnant woman. The declaration of pregnancy, including the estimated date of conception, shall also be kept on file, but may be maintained separately from the dose records.

(5) The licensee or registrant shall retain each required form or record until the Executive Secretary terminates each pertinent license or registration requiring the record.

R313-15-1108. Records of Dose to Individual Members of the Public.

(1) Each licensee or registrant shall maintain records sufficient to demonstrate compliance with the dose limit for individual members of the public. See Section R313-15-301.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1108(1) until the Executive Secretary terminates each pertinent license or registration requiring the record. Requirements for disposition of these records, prior to license termination, are located in Section R313-12-51 for activities licensed under these rules.

R313-15-1109. Records of Waste Disposal.

(1) Each licensee or registrant shall maintain records of the disposal of licensed or registered materials made pursuant to Sections R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, Rule R313-25, and disposal by burial in soil, including burials authorized before January 28, 1981.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1109(1) until the Executive Secretary terminates each pertinent license or registration requiring the record.

R313-15-1110. Records of Testing Entry Control Devices for Very High Radiation Areas.

(1) Each licensee or registrant shall maintain records of tests made pursuant to Subsection R313-15-603(2)(i) on entry control devices for very high radiation areas. These records shall include the date, time, and results of each such test of function.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1110(1) for three years after the record is made.

R313-15-1111. Form of Records.

Each record required by Rule R313-15 shall be legible throughout the specified retention period. The record shall be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period or the record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records, such as letters, drawings, and specifications, shall include all pertinent information, such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

R313-15-1201. Reports of Stolen, Lost, or Missing Licensed or Registered Sources of Radiation.

(1) Telephone Reports. Each licensee or registrant shall report to the Executive Secretary by telephone as follows:

(a) Immediately after its occurrence becomes known to the licensee or registrant, stolen, lost, or missing licensed or registered radioactive material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in Appendix C of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference, under such circumstances that it appears to the licensee or registrant that an exposure could result to individuals in unrestricted areas;

(b) Within 30 days after its occurrence becomes known to the licensee or registrant, lost, stolen, or missing licensed or registered radioactive material in an aggregate quantity greater than ten times the quantity specified in Appendix C of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference, that is still missing.

(c) Immediately after its occurrence becomes known to the registrant, a stolen, lost, or missing radiation machine.

(2) Written Reports. Each licensee or registrant required to make a report pursuant to Subsection R313-15-1201(1) shall, within 30 days after making the telephone report, make a written report to the Executive Secretary setting forth the following information:

(a) A description of the licensed or registered source of radiation involved, including, for radioactive material, the kind, quantity, and chemical and physical form; and, for radiation machines, the manufacturer, model and serial number, type and maximum energy of radiation emitted;

(b) A description of the circumstances under which the loss or theft occurred; and

(c) A statement of disposition, or probable disposition, of the licensed or registered source of radiation involved; and

(d) Exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible total effective dose equivalent to persons in unrestricted areas; and

(e) Actions that have been taken, or will be taken, to

recover the source of radiation; and

(f) Procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed or registered sources of radiation.

(3) Subsequent to filing the written report, the licensee or registrant shall also report additional substantive information on the loss or theft within 30 days after the licensee or registrant learns of such information.

(4) The licensee or registrant shall prepare any report filed with the Executive Secretary pursuant to Section R313-15-1201 so that names of individuals who may have received exposure to radiation are stated in a separate and detachable portion of the report.

R313-15-1202. Notification of Incidents.

(1) Immediate Notification. Notwithstanding other requirements for notification, each licensee or registrant shall immediately report each event involving a source of radiation possessed by the licensee or registrant that may have caused or threatens to cause any of the following conditions:

(a) An individual to receive:

(i) A total effective dose equivalent of 0.25 Sv (25 rem) or more; or

(ii) An eye dose equivalent of 0.75 Sv (75 rem) or more; or

(iii) A shallow dose equivalent to the skin or extremities or a total organ dose equivalent of 2.5 Gy (250 rad) or more; or

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake five times the occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(2) Twenty-Four Hour Notification. Each licensee or registrant shall, within 24 hours of discovery of the event, report to the Executive Secretary each event involving loss of control of a licensed or registered source of radiation possessed by the licensee or registrant that may have caused, or threatens to cause, any of the following conditions:

(a) An individual to receive, in a period of 24 hours:

(i) A total effective dose equivalent exceeding 0.05 Sv (five rem); or

(ii) An eye dose equivalent exceeding 0.15 Sv (15 rem); or

(iii) A shallow dose equivalent to the skin or extremities or a total organ dose equivalent exceeding 0.5 Sv (50 rem); or

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake in excess of one occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(3) The licensee or registrant shall prepare each report filed with the Executive Secretary pursuant to Section R313-15-1202 so that names of individuals who have received exposure to sources of radiation are stated in a separate and detachable portion of the report.

(4) Licensees or registrants shall make the reports required by Subsections R313-15-1202(1) and R313-15-1202(2) to the Executive Secretary by telephone, telegram, mailgram, or facsimile to the Executive Secretary.

(5) The provisions of Section R313-15-1202 do not apply to doses that result from planned special exposures, provided such doses are within the limits for planned special exposures and are reported pursuant to Section R313-15-1204.

R313-15-1203. Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Constraints or Limits.

(1) Reportable Events. In addition to the notification required by Section R313-15-1202, each licensee or registrant shall submit a written report within 30 days after learning of any of the following occurrences:

(a) Incidents for which notification is required by Section R313-15-1202; or

(b) Doses in excess of any of the following:

(i) The occupational dose limits for adults in Section R313-15-201; or

(ii) The occupational dose limits for a minor in Section R313-15-207; or

(iii) The limits for an embryo/fetus of a declared pregnant woman in Section R313-15-208; or

(iv) The limits for an individual member of the public in Section R313-15-301; or

(v) Any applicable limit in the license or registration; or

(vi) The ALARA constraints for air emissions established under Subsection R313-15-101(4); or

(c) Levels of radiation or concentrations of radioactive material in:

(i) A restricted area in excess of applicable limits in the license or registration; or

(ii) An unrestricted area in excess of ten times the applicable limit set forth in Rule R313-15 or in the license or registration, whether or not involving exposure of any individual in excess of the limits in Section R313-15-301; or

(d) For licensees subject to the provisions of U.S. Environmental Protection Agency's generally applicable environmental radiation standards in 40 CFR 190, levels of radiation or releases of radioactive material in excess of those standards, or of license conditions related to those standards.

(2) Contents of Reports.

(a) Each report required by Subsection R313-15-1203(1) shall describe the extent of exposure of individuals to radiation and radioactive material, including, as appropriate:

(i) Estimates of each individual's dose; and

(ii) The levels of radiation and concentrations of radioactive material involved; and

(iii) The cause of the elevated exposures, dose rates, or concentrations; and

(iv) Corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, ALARA constraints, generally applicable environmental standards, and associated license or registration conditions.

(b) Each report filed pursuant to Subsection R313-15-1203(1) shall include for each occupationally overexposed individual: the name, Social Security account number, and date of birth. With respect to the limit for the embryo/fetus in Section R313-15-208, the identifiers should be those of the

declared pregnant woman. The report shall be prepared so that this information is stated in a separate and detachable portion of the report.

(3) All licensees or registrants who make reports pursuant to Subsection R313-15-1203(1) shall submit the report in writing to the Executive Secretary.

R313-15-1204. Reports of Planned Special Exposures.

The licensee or registrant shall submit a written report to the Executive Secretary within 30 days following any planned special exposure conducted in accordance with Section R313-15-206, informing the Executive Secretary that a planned special exposure was conducted and indicating the date the planned special exposure occurred and the information required by Section R313-15-1106.

R313-15-1205. Reports to Individuals of Exceeding Dose Limits.

When a licensee or registrant is required, pursuant to the provisions of Sections R313-15-1203 or R313-15-1204, to report to the Executive Secretary any exposure of an identified occupationally exposed individual, or an identified member of the public, to sources of radiation, the licensee or registrant shall also provide a copy of the report submitted to the Executive Secretary to the individual. This report shall be transmitted at a time no later than the transmittal to the Executive Secretary.

R313-15-1207. Notifications and Reports to Individuals.

(1) Requirements for notification and reports to individuals of exposure to radiation or radioactive material are specified in Rule R313-18.

(2) When a licensee or registrant is required pursuant to Section R313-15-1203 to report to the Executive Secretary any exposure of an individual to radiation or radioactive material, the licensee or registrant shall also notify the individual. Such notice shall be transmitted at a time not later than the transmittal to the Executive Secretary, and shall comply with the provisions of Rule R313-18.

R313-15-1208. Reports of Leaking or Contaminated Sealed Sources.

If the test for leakage or contamination required pursuant to Section R313-15-401 indicates a sealed source is leaking or contaminated, a report of the test shall be filed within five days with the Executive Secretary describing the equipment involved, the test results and the corrective action taken.

R313-15-1301. Vacating Premises.

Each specific licensee or registrant shall, no less than 30 days before vacating or relinquishing possession or control of premises which may have been contaminated with radioactive material as a result of his activities, notify the Executive Secretary in writing of intent to vacate. When deemed necessary by the Executive Secretary, the licensee shall decontaminate the premises in such a manner as the Executive Secretary may specify.

KEY: radioactive material, contamination, waste disposal, safety

March 12, 1999 19-3-104
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R313. Environmental Quality, Radiation Control.
R313-19. Requirements of General Applicability to Licensing of Radioactive Material.
R313-19-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe requirements governing the licensing of radioactive material.

(2) The rules set forth herein are adopted pursuant to the provisions of Sections 19-3-104(3) and 19-3-104(6).

R313-19-2. General.

(1) A person shall not receive, possess, use, transfer, own or acquire radioactive material except as authorized in a specific or general license issued pursuant to R313-21 or R313-22 or as otherwise provided in R313-19.

(2) In addition to the requirements of R313-19, R313-21 or R313-22, all licensees are subject to the requirements of R313-12, R313-15, and R313-18. Licensees authorized to use sealed sources containing radioactive materials in panoramic irradiators with dry or wet storage of radioactive sealed sources, underwater irradiators, or irradiators with high dose rates from radioactive sealed sources are subject to the requirements of R313-34, licensees engaged in industrial radiographic operations are subject to the requirements of R313-36, licensees using radionuclides in the healing arts are subject to the requirements of R313-32, licensees engaged in land disposal of radioactive material are subject to the requirements of R313-25, and licensees engaged in wireline and subsurface tracer studies are subject to the requirements of R313-38.

R313-19-13. Exemptions.

(1) Source material.

(a) A person is exempt from R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses, owns, or transfers source material in a chemical mixture, compound, solution or alloy in which the source material is by weight less than 1/20 of one percent (0.05 percent) of the mixture, compound, solution, or alloy.

(b) A person is exempt from R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses or transfers unrefined and unprocessed ore containing source material; provided, that, except as authorized in a specific license, such person shall not refine or process the ore.

(c) A person is exempt from R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses or transfers:

(i) any quantities of thorium contained in:

(A) incandescent gas mantles,

(B) vacuum tubes,

(C) welding rods,

(D) electric lamps for illuminating purposes: provided that, each lamp does not contain more than 50 milligrams of thorium,

(E) germicidal lamps, sunlamps, and lamps for outdoor or industrial lighting provided that each lamp does not contain more than two grams of thorium,

(F) rare earth metals and compounds, mixtures, and products containing not more than 0.25 percent by weight thorium, uranium, or any combination of these, or

(G) personnel neutron dosimeters provided that each dosimeter does not contain more than 50 milligrams of thorium;

(ii) source material contained in the following products:

(A) glazed ceramic tableware, provided that the glaze contains not more than 20 percent by weight source material,

(B) piezoelectric ceramic containing not more than two percent by weight source material, or

(C) glassware containing not more than ten percent by weight source material, but not including commercially manufactured glass brick, pane glass, ceramic tile, or other glass or ceramic used in construction;

(iii) photographic film, negatives and prints containing uranium or thorium;

(iv) a finished product or part fabricated of, or containing, tungsten-thorium or magnesium-thorium alloys, provided that the thorium content of the alloy does not exceed four percent by weight and that this exemption shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of the product or part;

(v) uranium contained in counterweights installed in aircraft, rockets, projectiles, and missiles, or stored or handled in connection with installation or removal of the counterweights, provided that:

(A) the counterweights are manufactured in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission authorizing distribution by the licensee pursuant to 10 CFR Part 40,

(B) each counterweight has been impressed with the following legend clearly legible through any plating or other covering: "DEPLETED URANIUM",

(C) each counterweight is durably and legibly labeled or marked with the identification of the manufacturer and the statement: "UNAUTHORIZED ALTERATIONS PROHIBITED",

(D) The requirements specified in R313-19-13(1)(c)(v)(B) and (C) need not be met by counterweights manufactured prior to December 31, 1969, provided that such counterweights are impressed with the legend, "CAUTION - RADIOACTIVE MATERIAL - URANIUM", as previously required by the rules, and

(E) the exemption contained in R313-19-13(1)(c)(v) shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of counterweights other than repair or restoration of any plating or other covering;

(vi) natural or depleted uranium metal used as shielding constituting part of a shipping container which is conspicuously and legibly impressed with the legend "CAUTION - RADIOACTIVE SHIELDING - URANIUM" and the uranium metal is encased in mild steel or equally fire resistant metal of minimum wall thickness of one eighth inch (3.2 mm);

(vii) thorium contained in finished optical lenses, provided that each lens does not contain more than 30 percent by weight of thorium, and that this exemption shall not be deemed to authorize either:

(A) the shaping, grinding, or polishing of a lens or manufacturing processes other than the assembly of such lens into optical systems and devices without alteration of the lens, or

(B) the receipt, possession, use, or transfer of thorium contained in contact lenses, or in spectacles, or in eyepieces in

binoculars or other optical instruments;

(viii) uranium contained in detector heads for use in fire detection units, provided that each detector head contains not more than 0.005 microcurie (185.0 Bq) of uranium; or

(ix) thorium contained in a finished aircraft engine part containing nickel-thoria alloy, provided that:

(A) the thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide), and

(B) the thorium content in the nickel-thoria alloy does not exceed four percent by weight.

(d) The exemptions in R313-19-13(1)(c) do not authorize the manufacture of any of the products described.

(2) Radioactive material other than source material.

(a) Exempt concentrations.

(i) Except as provided in R313-19-13(2)(a)(ii) a person is exempt from R313-19, R313-21 and R313-22 to the extent that the person receives, possesses, uses, transfers, owns or acquires products or materials containing:

(A) radioactive material introduced in concentrations not in excess of those listed in R313-19-70, or

(B) natural occurring radioactive materials containing less than 15 picocuries per gram radium-226.

(ii) A person may not introduce radioactive material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under R313-19-13(2)(a)(i) or equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State, except in accordance with a specific license issued pursuant to R313-22-75(1) or the general license provided in R313-19-30.

(b) Exempt quantities.

(i) Except as provided in R313-19-13(2)(b)(ii) and (iii) a person is exempt from these rules to the extent that the person receives, possesses, uses, transfers, owns, or acquires radioactive material in individual quantities which do not exceed the applicable quantity set forth in R313-19-71.

(ii) R313-19-13(2)(b) does not authorize the production, packaging or repackaging of radioactive material for purposes of commercial distribution, or the incorporation of radioactive material into products intended for commercial distribution.

(iii) A person may not, for purposes of commercial distribution, transfer radioactive material in the individual quantities set forth in R313-19-71, knowing or having reason to believe that the quantities of radioactive material will be transferred to persons exempt under R313-19-13(2)(b) or equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State, except in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission, pursuant to 10 C.F.R. Part 32 or by the Executive Secretary pursuant to R313-22-75(2), which license states that the radioactive material may be transferred by the licensee to persons exempt under R313-19-13(2)(b) or the equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State.

(iv) A person who possesses radioactive material received or acquired prior to September 25, 1971, under the general license formerly provided in 10 C.F.R. Part 31.5 is exempt from the requirements for a license set forth in R313-19 to the extent that the person possesses, uses, transfers or owns the radioactive material. This exemption does not apply for radium-226.

(c) Exempt items.

(i) Certain items containing radioactive material. Except for persons who apply radioactive material to, or persons who incorporate radioactive material into the following products, a person is exempt from these rules to the extent that person receives, possesses, uses, transfers, owns or acquires the following products:

(A) Timepieces or hands or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified levels of radiation:

(I) 25 millicuries (925.0 MBq) of tritium per timepiece;

(II) five millicuries (185.0 MBq) of tritium per hand;

(III) 15 millicuries (555.0 MBq) of tritium per dial. Bezels when used shall be considered as part of the dial;

(IV) 100 microcuries (3.7 MBq) of promethium-147 per watch or 200 microcuries (7.4 MBq) of promethium-147 per any other timepiece;

(V) 20 microcuries (0.74 MBq) of promethium-147 per watch hand or 40 microcuries (1.48 MBq) of promethium-147 per other timepiece hand;

(VI) 60 microcuries (2.22 MBq) of promethium-147 per watch dial or 120 microcuries (4.44 MBq) of promethium-147 per other timepiece dial. Bezels when used shall be considered as part of the dial;

(VII) the radiation dose rate from hands and dials containing promethium-147 will not exceed, when measured through 50 milligrams per square centimeter of absorber:

for wrist watches, 0.1 millirad (1.0 uGy) per hour at ten centimeters from any surface;

for pocket watches, 0.1 millirad (1.0 uGy) per hour at one centimeter from any surface;

for other timepieces, 0.2 millirad (2.0 uGy) per hour at ten centimeters from any surface;

(VIII) one microcurie (37.0 kBq) of radium-226 per timepiece in timepieces manufactured prior to the effective date of these rules.

(B) Lock illuminators containing not more than 15 millicuries (555.0 MBq) of tritium or not more than two millicuries (74.0 MBq) of promethium-147 installed in automobile locks. The levels of radiation from each lock illuminator containing promethium-147 will not exceed one millirad (10 uGy) per hour at one centimeter from any surface when measured through 50 milligrams per square centimeter of absorber.

(C) Precision balances containing not more than one millicurie (37.0 MBq) of tritium per balance or not more than 0.5 millicurie (18.5 MBq) of tritium per balance part.

(D) Automobile shift quadrants containing not more than 25 millicuries (925 MBq) of tritium.

(E) Marine compasses containing not more than 750 millicuries (27.8 GBq) of tritium gas and other marine navigational instruments containing not more than 250 millicuries (9.25 GBq) of tritium gas.

(F) Thermostat dials and pointers containing not more than 25 millicuries (925.0 MBq) of tritium per thermostat.

(G) Electron tubes, including spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwave tubes, indicator tubes, pick-up tubes, radiation detection tubes, and other completely sealed tubes that are

designed to conduct or control electrical currents; provided that each tube does not contain more than one of the following specified quantities of radioactive material:

(I) 150 millicuries (5.55 GBq) of tritium per microwave receiver protector tube or ten millicuries (370.0 MBq) of tritium per any other electron tube;

(II) one microcurie (37.0 kBq) of cobalt-60;

(III) five microcuries (185.0 kBq) of nickel-63;

(IV) 30 microcuries (1.11 MBq) of krypton-85;

(V) five microcuries (185.0 kBq) of cesium-137;

(VI) 30 microcuries (1.11 MBq) of promethium-147;

(VII) one microcurie (37.0 kBq) of radium-226;

and provided further, that the radiation dose rate from each electron tube containing radioactive material will not exceed one millirad (10.0 uGy) per hour at one centimeter from any surface when measured through seven milligrams per square centimeter of absorber.

(H) Ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, one or more sources of radioactive material, provided that:

(I) each source contains no more than one exempt quantity set forth in R313-19-71; and

(II) each instrument contains no more than ten exempt quantities. For purposes of this requirement, an instrument's source(s) may contain either one type or different types of radionuclides and an individual exempt quantity may be composed of fractional parts of one or more of exempt quantities in R313-19-71, provided that the sum of the fractions shall not exceed unity;

(III) for purposes of R313-19-13(2)(c)(i)(H), 0.05 microcurie (1.85 kBq) of americium-241 is considered an exempt quantity under R313-19-71.

(I) Spark gap irradiators containing not more than one microcurie (37.0 kBq) of cobalt-60 per spark gap irradiator for use in electrically ignited fuel oil burners having a firing rate of at least three gallons (11.4 liters) per hour.

(ii) Self-luminous products containing radioactive material.

(A) Tritium, krypton-85 or promethium-147. Except for persons who manufacture, process or produce self-luminous products containing tritium, krypton-85 or promethium-147, a person is exempt from these rules to the extent that the person receives, possesses, uses, transfers, owns, or acquires tritium, krypton-85 or promethium-147 in self-luminous products manufactured, processed, produced, imported or transferred in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to 10 C.F.R. Part 32.22, which license authorizes the transfer of the product to persons who are exempt from regulatory requirements. The exemption in R313-19-13(2)(c)(ii) does not apply to tritium, krypton-85, or promethium-147 used in products for frivolous purposes or in toys or adornments.

(B) Radium-226. A person is exempt from these rules, to the extent that such person receives, possesses, uses, transfers, or owns articles containing less than 0.1 microcurie (3.7 kBq) of radium-226 which were acquired prior to the effective date of these rules.

(iii) Gas and aerosol detectors containing radioactive material.

(A) Except for persons who manufacture, process, or produce gas and aerosol detectors containing radioactive material, a person is exempt from these rules to the extent that the person receives, possesses, uses, transfers, owns, or acquires radioactive material in gas and aerosol detectors designed to protect life or property from fires and airborne hazards, provided that detectors containing radioactive material shall have been manufactured, imported, or transferred in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to 10 C.F.R. Part 32.26, or a Licensing State pursuant to R313-22-75(3) or equivalent requirements, which authorizes the transfer of the detectors to persons who are exempt from regulatory requirements.

(B) Gas and aerosol detectors previously manufactured and distributed to general licensees in accordance with a specific license issued by an Agreement State shall be considered exempt under R313-19-13(2)(c)(iii)(A), provided that the device is labeled in accordance with the specific license authorizing distribution of the general licensed device, and provided further that they meet the requirements of R313-22-75(3).

(C) Gas and aerosol detectors containing naturally occurring and accelerator-produced radioactive material (NARM) previously manufactured and distributed in accordance with a specific license issued by a Licensing State shall be considered exempt under R313-19-13(2)(c)(iii)(A), provided that the device is labeled in accordance with the specific license authorizing distribution, and provided further that they meet the requirements of R313-22-75(3).

(iv) Capsules containing carbon-14 urea for "in vivo" diagnostic use for humans.

(A) Except as provided in R313-19-13(2)(c)(iv)(B), any person is exempt from the regulations in R313-19 and R313-32 provided that the person receives, possesses, uses, transfers, owns, or acquires capsules containing 37 kBq (1 uCi) carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process) each, for "in vivo" diagnostic use for humans.

(B) Any person who desires to use the capsules for research involving human subjects shall apply for and receive a specific license pursuant to R313-32.

(C) Nothing in R313-19-13(2)(c)(iv) relieves persons from complying with applicable United States Food and Drug Administration, other Federal, and State requirements governing receipt, administration, and use of drugs.

(v) Resins containing scandium-46 and designed for sand consolidation in oil wells. A person is exempt from these rules to the extent that the person receives, possesses, uses, transfers, owns or acquires synthetic plastic resins containing scandium-46 which are designed for sand consolidation in oil wells. The resins shall have been manufactured or imported in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission, or shall have been manufactured in accordance with the specifications contained in a specific license issued by the Executive Secretary or an Agreement State to the manufacturer of resins pursuant to licensing requirements equivalent to those in 10 C.F.R. Part 32.16 and 32.17. This exemption does not authorize the manufacture of any resins containing scandium-46.

(vi) With respect to R313-19-13(2)(b)(iii), R313-19-13(2)(c)(i), (iii) and (iv), the authority to transfer possession or control by the manufacturer, processor, or producer of equipment, devices, commodities, or other products containing byproduct material whose subsequent possession, use, transfer, and disposal by other persons is exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

R313-19-20. Types of Licenses.

Licenses for radioactive materials are of two types: general and specific.

(1) General licenses provided in R313-21 are effective without the filing of applications with the Executive Secretary or the issuance of licensing documents to the particular persons, although the filing of a certificate with the Executive Secretary may be required by the particular general license. The general licensee is subject to the other applicable portions of these rules and limitations of the general license.

(2) Specific licenses require the submission of an application to the Executive Secretary and the issuance of a licensing document by the Executive Secretary. The licensee is subject to applicable portions of these rules as well as limitations specified in the licensing document.

R313-19-25. Prelicensing Inspection.

The Executive Secretary may verify information contained in applications and secure additional information deemed necessary to make a reasonable determination as to whether to issue a license and whether special conditions should be attached thereto by visiting the facility or location where radioactive materials would be possessed or used, and by discussing details of the proposed possession or use of the radioactive materials with the applicant or representatives designated by the applicant. Such visits may be made by representatives of the Board or the Executive Secretary.

R313-19-30. Reciprocal Recognition of Licenses.

(1) Subject to these rules, a person who holds a specific license from the U.S. Nuclear Regulatory Commission, an Agreement State, or Licensing State, and issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, is hereby granted a general license to conduct the activities authorized in the licensing document within this state for a period not in excess of 180 days in a calendar year provided that:

(a) the licensing document does not limit the activity authorized by the document to specified installations or locations;

(b) the out-of-state licensee notifies the Executive Secretary in writing at least three days prior to engaging in such activity. Notifications shall indicate the location, period, and type of proposed possession and use within the state, and shall be accompanied by a copy of the pertinent licensing document. If, for a specific case, the three-day period would impose an undue hardship on the out-of-state licensee, the licensee may, upon application to the Executive Secretary, obtain permission to proceed sooner. The Executive Secretary may waive the requirement for filing additional written notifications during the remainder of the calendar year following the receipt of the initial notification from a person engaging in activities under the general license provided in R313-19-30(1);

(c) the out-of-state licensee complies with all applicable rules of the Board and with the terms and conditions of the licensing document, except those terms and conditions which may be inconsistent with applicable rules of the Board;

(d) the out-of-state licensee supplies other information as the Executive Secretary may request; and

(e) the out-of-state licensee shall not transfer or dispose of radioactive material possessed or used under the general license provided in R313-19-30(1) except by transfer to a person:

(i) specifically licensed by the Executive Secretary or by the U.S. Nuclear Regulatory Commission, a Licensing State, or an Agreement State to receive the material, or

(ii) exempt from the requirements for a license for material under R313-19-13(2)(a).

(2) Notwithstanding the provisions of R313-19-30(1), a person who holds a specific license issued by the U.S. Nuclear Regulatory Commission, a Licensing State, or an Agreement State authorizing the holder to manufacture, transfer, install, or service a device described in R313-21-22(4) within the areas subject to the jurisdiction of the licensing body is hereby granted a general license to install, transfer, demonstrate, or service a device in this state provided that:

(a) the person shall file a report with the Executive Secretary within thirty days after the end of a calendar quarter in which a device is transferred to or installed in this state. Reports shall identify each general licensee to whom a device is transferred by name and address, the type of device transferred, and the quantity and type of radioactive material contained in the device;

(b) the device has been manufactured, labeled, installed, and serviced in accordance with applicable provisions of the specific license issued to the person by the Nuclear Regulatory Commission, a Licensing State, or an Agreement State;

(c) the person shall assure that any labels required to be affixed to the device under rules of the authority which licensed manufacture of the device bear a statement that "Removal of this label is prohibited"; and

(d) the holder of the specific license shall furnish to the general licensee to whom the device is transferred or on whose premises a device is installed a copy of the general license contained in R313-21-22(4) or in equivalent rules of the agency having jurisdiction over the manufacture and distribution of the device.

(3) The Executive Secretary may withdraw, limit, or qualify his acceptance of a specific license or equivalent licensing document issued by the U.S. Nuclear Regulatory Commission, a Licensing State or an Agreement State, or a product distributed pursuant to the licensing document, upon determining that the action is necessary in order to prevent undue hazard to public health and safety or property.

R313-19-34. Terms and Conditions of Licenses.

(1) Licenses issued pursuant to R313-19 shall be subject to provisions of the Act, now or hereafter in effect, and to all rules, and orders of the Executive Secretary.

(2) Licenses issued or granted under R313-21 and R313-22 and rights to possess or utilize radioactive material granted by a license issued pursuant to R313-21 and R313-22 shall not be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of a license to a person unless the Executive Secretary shall, after securing full information find that the transfer is in accordance with the provisions of the Act now or hereafter in effect, and to all rules, and orders of the Executive Secretary, and shall give his consent in writing.

(3) Persons licensed by the Executive Secretary pursuant to R313-21 and R313-22 shall confine use and possession of the material licensed to the locations and purposes authorized in the license.

(4) Licensees shall notify the Executive Secretary in writing and request termination of the license when the licensee decides to terminate activities involving materials authorized under the license.

(5) Licensees shall notify the Executive Secretary in writing immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title 11, Bankruptcy, of the United States Code by or against:

(a) the licensee;

(b) an entity, as that term is defined in 11 U.S.C.101(14), controlling the licensee or listing the license or licensee as property of the estate; or

(c) an affiliate, as that term is defined in 11 U.S.C.101(2), of the licensee.

(6) The notification specified in R313-19-34(5) shall indicate:

(a) the bankruptcy court in which the petition for bankruptcy was filed; and

(b) the date of the filing of the petition.

(7) Licensees required to submit emergency plans pursuant to R313-22-32(8) shall follow the emergency plan approved by the Executive Secretary. The licensee may change the approved plan without the Executive Secretary's approval only if the changes do not decrease the effectiveness of the plan. The licensee shall furnish the change to the Executive Secretary and to affected off-site response organizations within six months after the change is made. Proposed changes that decrease, or potentially decrease, the effectiveness of the approved emergency plan may not be implemented without prior application to and prior approval by the Executive Secretary.

R313-19-41. Transfer of Material.

(1) Licensees shall not transfer radioactive material except as authorized pursuant to R313-19-41.

(2) Except as otherwise provided in the license and subject to the provisions of R313-19-41(3) and (4), licensees may transfer radioactive material:

(a) to the Executive Secretary, if prior approval from the Executive Secretary has been received;

(b) to the U.S. Department of Energy;

(c) to persons exempt from the rules in R313-19 to the extent permitted under the exemption;

(d) to persons authorized to receive the material under terms of a general license or its equivalent, or a specific license or equivalent licensing document, issued by the Executive Secretary, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State, or to a person otherwise authorized to receive the material by the federal government or an agency thereof, the Executive Secretary, an Agreement State or a Licensing State; or

(e) as otherwise authorized by the Executive Secretary in writing.

(3) Before transferring radioactive material to a specific licensee of the Executive Secretary, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State, or to a general licensee who is required to register with the Executive Secretary, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(4) The following methods for the verification required by R313-19-41(3) are acceptable:

(a) the transferor may possess, and read a current copy of the transferee's specific license or registration certificate;

(b) the transferor may possess a written certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date;

(c) for emergency shipments, the transferor may accept oral certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date, provided that the oral certification is confirmed in writing within ten days;

(d) the transferor may obtain other information compiled by a reporting service from official records of the Executive Secretary, the U.S. Nuclear Regulatory Commission, an Agreement State, or a Licensing State regarding the identity of licensees and the scope and expiration dates of licenses and registration; or

(e) when none of the methods of verification described in R313-19-41(4) are readily available or when a transferor desires to verify that information received by one of the methods is correct or up-to-date, the transferor may obtain and record confirmation from the Executive Secretary, the U.S. Nuclear Regulatory Commission, an Agreement State, or a Licensing State that the transferee is licensed to receive the radioactive material.

(5) Shipment and transport of radioactive material shall be in accordance with the provisions of R313-19-100.

R313-19-50. Reporting Requirements.

(1) Licensees shall notify the Executive Secretary as soon as possible but not later than four hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits or releases of licensed material that could exceed regulatory limits. Events may include fires, explosions, toxic gas releases, etc.

(2) The following events involving licensed material require notification of the Executive Secretary by the licensee within 24 hours:

(a) an unplanned contamination event that:

(i) requires access to the contamination area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;

(ii) involves a quantity of material greater than five times the lowest annual limit on intake specified in Appendix B of 10 CFR 20.1001 to 20.2402, 1993 ed., which is incorporated by reference, for the material; and

(iii) has access to the area restricted for a reason other than to allow radionuclides with a half-life of less than 24 hours to decay prior to decontamination; or

(b) an event in which equipment is disabled or fails to function as designed when:

(i) the equipment is required by rule or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;

(ii) the equipment is required by rule or license condition to be available and operable; and

(iii) no redundant equipment is available and operable to perform the required safety function; or

(c) an event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body; or

(d) an unplanned fire or explosion damaging licensed material or a device, container, or equipment containing licensed material when:

(i) the quantity of material involved is greater than five times the lowest annual limit on intake specified in Appendix B of 10 CFR 20.1001 to 20.2402, 1993 ed., which is incorporated by reference, for the material; and

(ii) the damage affects the integrity of the licensed material or its container.

(3) Preparation and submission of reports. Reports made by licensees in response to the requirements of R313-19-50 must be made as follows:

(a) licensees shall make reports required by R313-19-50(1) and (2) by telephone to the Executive Secretary. To the extent that the information is available at the time of notification, the information provided in these reports must include:

(i) the caller's name and call back telephone number;

(ii) a description of the event, including date and time;

(iii) the exact location of the event;

(iv) the radionuclides, quantities, and chemical and physical form of the licensed material involved; and

(v) available personnel radiation exposure data.

(b) Written report. A licensee who makes a report required by R313-19-50(1) or (2) shall submit a written follow-up report within 30 days of the initial report. Written reports prepared pursuant to other rules may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports shall be sent to the Executive Secretary. The report shall include the following:

(i) A description of the event, including the probable cause and the manufacturer and model number, if applicable, of equipment that failed or malfunctioned;

(ii) the exact location of the event;

(iii) the radionuclides, quantities, and chemical and physical form of the licensed material involved;

(iv) date and time of the event;

(v) corrective actions taken or planned and results of evaluations or assessments; and

(vi) the extent of exposure of individuals to radiation or radioactive materials without identification of individuals by name.

R313-19-61. Modification, Revocation, and Termination of Licenses.

(1) The terms and conditions of all licenses shall be subject to amendment, revision, or modification or the license may be suspended or revoked by reason of amendments to the Act, or by reason of rules, and orders issued by the Executive Secretary.

(2) Licenses may be revoked, suspended, or modified, in whole or in part, for any material false statement in the application or any statement of fact required under provisions of the Act, or because of conditions revealed by the application or statement of fact or any report, record, or inspection or other means which would warrant the Executive Secretary to refuse to grant a license on an original application, or for violation of, or failure to observe any of the terms and conditions of the Act, or of the license, or of any rule, or order of the Executive Secretary.

(3) Administrative reviews, modifications, revocations or terminations of licenses will be in accordance with Title 19, Chapter 3.

(4) The Executive Secretary may terminate a specific license upon written request submitted by the licensee to the Executive Secretary.

R313-19-70. Exempt Concentrations of Radioactive Materials.

Refer to R313-19-13(2)(a)

TABLE

Element (Atomic Number)	Radionuclide	Column I Concentration Material Normally Used As Gas (uCi/ml)	Column II Concentration Liquid (uCi/ml) Solid (uCi/g)
Antimony (51)	Sb-122		3 E-4
	Sb-124		2 E-4
	Sb-125		1 E-3
Argon (18)	Ar-37	1 E-3	
	Ar-41	4 E-7	
Arsenic (33)	As-73		5 E-3
	As-74		5 E-4
	As-76		2 E-4
	As-77		8 E-4
Barium (56)	Ba-131		2 E-3
	Ba-140		3 E-4
Beryllium (4)	Be-7		2 E-2
Bismuth (83)	Bi-206		4 E-4
Bromine (35)	Br-82	4 E-7	3 E-3
Cadmium (48)	Cd-109		2 E-3
	Cd-115m		3 E-4
	Cd-115		3 E-4
Calcium (20)	Ca-45		9 E-5
	Ca-47		5 E-4

Carbon (6)	C-14	1 E-6	8 E-3
Cerium (58)	Ce-141		9 E-4
	Ce-143		4 E-4
	Ce-144		1 E-4
Cesium (55)	Cs-131		2 E-2
	Cs-134m		6 E-2
	Cs-134		9 E-5
Chlorine (17)	Cl-38	9 E-7	4 E-3
Chromium (24)	Cr-51		2 E-2
Cobalt (27)	Co-57		5 E-3
	Co-58		1 E-3
	Co-60		5 E-4
Copper (29)	Cu-64		3 E-3
Dysprosium (66)	Dy-165		4 E-3
	Dy-166		4 E-4
Erbium (68)	Er-169		9 E-4
	Er-171		1 E-3
Europium (63)	Eu-152 (T = 9.2 h)		6 E-4
	Eu-155		2 E-3
Fluorine (9)	F-18	2 E-6	8 E-3
Gadolinium (64)	Gd-153		2 E-3
	Gd-159		8 E-4
Gallium (31)	Ga-72		4 E-4
Germanium (32)	Ge-71		2 E-2
Gold (79)	Au-196		2 E-3
	Au-198		5 E-4
	Au-199		2 E-3
Hafnium (72)	Hf-181		7 E-4
Hydrogen (1)	H-3	5 E-6	3 E-2
Indium (49)	In-113m		1 E-2
	In-114m		2 E-4
Iodine (53)	I-126	3 E-9	2 E-5
	I-131	3 E-9	2 E-5
	I-132	8 E-8	6 E-4
	I-133	1 E-8	7 E-5
	I-134	2 E-7	1 E-3
Iridium (77)	Ir-190		2 E-3
	Ir-192		4 E-4
	Ir-194		3 E-4
Iron (26)	Fe-55		8 E-3
	Fe-59		6 E-4
Krypton (36)	Kr-85m	1 E-6	
	Kr-85	3 E-6	
Lanthanum (57)	La-140		2 E-4
Lead (82)	Pb-203		4 E-3
Lutetium (71)	Lu-177		1 E-3
Manganese (25)	Mn-52		3 E-4
	Mn-54		1 E-3
	Mn-56		1 E-3
Mercury (80)	Hg-197m		2 E-3
	Hg-197		3 E-3
	Hg-203		2 E-4
Molybdenum (42)	Mo-99		2 E-3
Neodymium (60)	Nd-147		6 E-4
	Nd-149		3 E-3
Nickel (28)	Ni-65		1 E-3
Niobium (Columbium)(41)	Nb-95		1 E-3
	Nb-97		9 E-3
Osmium (76)	Os-185		7 E-4
	Os-191m		3 E-2
	Os-191		2 E-3
	Os-193		6 E-4
Palladium (46)	Pd-103		3 E-3
	Pd-109		9 E-4
Phosphorus (15)	P-32		2 E-4
Platinum (78)	Pt-191		1 E-3
	Pt-193m		1 E-2
	Pt-197m		1 E-2
	Pt-197		1 E-3
Potassium (19)	K-42		3 E-3
Praseodymium (59)	Pr-142		3 E-4
	Pr-143		5 E-4
Promethium (61)	Pm-147		2 E-3
	Pm-149		4 E-3
Rhenium (75)	Re-183		6 E-4
	Re-186		9 E-3
	Re-188		6 E-4
Rhodium (45)	Rh-103m		1 E-1
	Rh-105		1 E-3
Rubidium (37)	Rb-86		7 E-4
Ruthenium (44)	Ru-97		4 E-4
	Ru-103		8 E-4
	Ru-105		1 E-3
	Ru-106		1 E-4
Samarium (62)	Sm-153		8 E-4
Scandium (21)	Sc-46		4 E-4
	Sc-47		9 E-4
	Sc-48		3 E-4
Selenium (34)	Se-75		3 E-3
Silicon (14)	Si-31		9 E-3
Silver (47)	Ag-105		1 E-3
	Ag-110m		3 E-4
	Ag-111		4 E-4
Sodium (11)	Na-24		2 E-3
Strontium (38)	Sr-85		1 E-4
	Sr-89		1 E-4
	Sr-91		7 E-4
	Sr-92		7 E-4
Sulfur (16)	S-35	9 E-8	6 E-4
Tantalum (73)	Ta-182		4 E-4
Technetium (43)	Tc-96m		1 E-1
	Tc-96		1 E-3
Tellurium (52)	Te-125m		2 E-3
	Te-127m		6 E-4
	Te-127		3 E-3
	Te-129m		3 E-4
	Te-131m		6 E-4
	Te-132		3 E-4
Terbium (65)	Tb-160		4 E-4
Thallium (81)	Tl-200		4 E-3
	Tl-201		3 E-3
	Tl-202		1 E-3
	Tl-204		1 E-3
Thulium (69)	Tm-170		5 E-4
	Tm-171		5 E-3
Tin (50)	Sn-113		9 E-4
	Sn-125		2 E-4
Tungsten (Wolfram)(74)	W-181		4 E-3
	W-187		7 E-4
Vanadium (23)	V-48		3 E-4
Xenon (54)	Xe-131m	4 E-6	
	Xe-133	3 E-6	
	Xe-135	1 E-6	
Ytterbium (70)	Yb-175		1 E-3
Yttrium (39)	Y-90		2 E-4
	Y-91m		3 E-2
	Y-91		3 E-4
	Y-92		6 E-4
	Y-93		3 E-4
Zinc (30)	Zn-65		1 E-3
	Zn-69m		7 E-4
	Zn-69		2 E-2
Zirconium (40)	Zr-95		6 E-4
	Zr-97		2 E-4
Beta or gamma emitting radioactive material not listed above with half-life less than 3 years		1 E-10	1 E-6

(1) In expressing the concentrations in R313-19-70, the activity stated is that of the parent radionuclide and takes into account the radioactive decay products, because many radionuclides disintegrate into radionuclides which are also radioactive.

(2) For purposes of R313-19-13(2)(a) where there is involved a combination of radionuclides, the limit for the combination should be derived as follows: Determine for each radionuclide in the product the ratio between the radioactivity concentration present in the product and the exempt radioactivity concentration established in R313-19-70 for the specific radionuclide when not in combination. The sum of the ratios may not exceed one or unity.

(3) To convert microcuries (uCi) to SI units of kilobecquerels (kBq), multiply the above values by 37.

R313-19-71. Exempt Quantities of Radioactive Materials.
Refer to R313-19-13(2)(b)

TABLE

RADIOACTIVE MATERIAL	MICROCURIES

Antimony-122 (Sb-122)	100
Antimony-124 (Sb-124)	10
Antimony-125 (Sb-125)	10
Arsenic-73 (As-73)	100
Arsenic-74 (As-74)	10
Arsenic-76 (As-76)	10
Arsenic-77 (As-77)	100
Barium-131 (Ba-131)	10
Barium-133 (Ba-133)	10
Barium-140 (Ba-140)	10
Bismuth-210 (Bi-210)	1
Bromine-82 (Br-82)	10
Cadmium-109 (Cd-109)	10
Cadmium-115m (Cd-115m)	10
Cadmium-115 (Cd-115)	100
Calcium-45 (Ca-45)	10
Calcium-47 (Ca-47)	10
Carbon-14 (C-14)	100
Cerium-141 (Ce-141)	100
Cerium-143 (Ce-143)	100
Cerium-144 (Ce-144)	1
Cesium-129 (Cs-129)	100
Cesium-131 (Cs-131)	1,000
Cesium-134m (Cs-134m)	100
Cesium-134 (Cs-134)	1
Cesium-135 (Cs-135)	10
Cesium-136 (Cs-136)	10
Cesium-137 (Cs-137)	10
Chlorine-36 (Cl-36)	10
Chlorine-38 (Cl-38)	10
Chromium-51 (Cr-51)	1,000
Cobalt-57 (Co-57)	100
Cobalt-58m (Co-58m)	10
Cobalt-58 (Co-58)	10
Cobalt-60 (Co-60)	1
Copper-64 (Cu-64)	100
Dysprosium-165 (Dy-165)	10
Dysprosium-166 (Dy-166)	100
Erbium-169 (Er-169)	100
Erbium-171 (Er-171)	100
Europium-152 (Eu-152) 9.2h	100
Europium-152 (Eu-152) 13 yr	1
Europium-154 (Eu-154)	1
Europium-155 (Eu-155)	10
Fluorine-18 (F-18)	1,000
Gadolinium-153 (Gd-153)	10
Gadolinium-159 (Gd-159)	100
Gallium-67 (Ga-67)	100
Gallium-72 (Ga-72)	10
Germanium-68 (Ge-68)	10
Germanium-71 (Ge-71)	100
Gold-195 (Au 195)	10
Gold-198 (Au-198)	100
Gold-199 (Au-199)	100
Hafnium-181 (Hf-181)	10
Holmium-166 (Ho-166)	100
Hydrogen-3 (H-3)	1,000
Indium-111 (In-111)	100
Indium-113m (In-113m)	100
Indium-114m (In-114m)	10
Indium-115m (In-115m)	100
Indium-115 (In-115)	10
Iodine-123 (I-123)	100
Iodine-125 (I-125)	1
Iodine-126 (I-126)	1
Iodine-129 (I-129)	0.1
Iodine-131 (I-131)	1
Iodine-132 (I-132)	10
Iodine-133 (I-133)	1
Iodine-134 (I-134)	10
Iodine-135 (I-135)	10
Iridium-192 (Ir-192)	10
Iridium-194 (Ir-194)	100
Iron-52 (Fe-52)	10
Iron-55 (Fe-55)	100
Iron-59 (Fe-59)	10
Krypton-85 (Kr-85)	100
Krypton-87 (Kr-87)	10
Lanthanum-140 (La-140)	10
Lutetium-177 (Lu-177)	100
Manganese-52 (Mn-52)	10
Manganese-54 (Mn-54)	10
Manganese-56 (Mn-56)	10
Mercury-197m (Hg-197m)	100
Mercury-197 (Hg-197)	100
Mercury-203 (Hg-203)	10
Molybdenum-99 (Mo-99)	100
Neodymium-147 (Nd-147)	100
Neodymium-149 (Nd-149)	100
Nickel-59 (Ni-59)	100
Nickel-63 (Ni-63)	10
Nickel-65 (Ni-65)	100
Niobium-93m (Nb-93m)	10
Niobium-95 (Nb-95)	10
Niobium-97 (Nb-97)	10
Osmium-185 (Os-185)	10
Osmium-191m (Os-191m)	100
Osmium-191 (Os-191)	100
Osmium-193 (Os-193)	100
Palladium-103 (Pd-103)	100
Palladium-109 (Pd-109)	100
Phosphorus-32 (P-32)	10
Platinum-191 (Pt-191)	100
Platinum-193m (Pt-193m)	100
Platinum-193 (Pt-193)	100
Platinum-197m (Pt-197m)	100
Platinum-197 (Pt-197)	100
Polonium-210 (Po-210)	0.1
Potassium-42 (K-42)	10
Potassium-43 (K-43)	10
Praseodymium-142 (Pr-142)	100
Praseodymium-143 (Pr-143)	100
Promethium-147 (Pm-147)	10
Promethium-149 (Pm-149)	10
Rhenium-186 (Re-186)	100
Rhenium-188 (Re-188)	100
Rhodium-103m (Rh-103m)	100
Rhodium-105 (Rh-105)	100
Rubidium-81 (Rb-81)	10
Rubidium-86 (Rb-86)	10
Rubidium-87 (Rb-87)	10
Ruthenium-97 (Ru-97)	100
Ruthenium-103 (Ru-103)	10
Ruthenium-105 (Ru-105)	10
Ruthenium-106 (Ru-106)	1
Samarium-151 (Sm-151)	10
Samarium-153 (Sm-153)	100
Scandium-46 (Sc-46)	10
Scandium-47 (Sc-47)	100
Scandium-48 (Sc-48)	10
Selenium-75 (Se-75)	10
Silicon-31 (Si-31)	100
Silver-105 (Ag-105)	10
Silver-110m (Ag-110m)	1
Silver-111 (Ag-111)	100
Sodium-22 (Na-22)	10
Sodium-24 (Na-24)	10
Strontium-85 (Sr-85)	10
Strontium-89 (Sr-89)	1
Strontium-90 (Sr-90)	0.1
Strontium-91 (Sr-91)	10
Strontium-92 (Sr-92)	10
Sulfur-35 (S-35)	100
Tantalum-182 (Ta-182)	10
Technetium-96 (Tc-96)	10
Technetium-97m (Tc-97m)	100
Technetium-97 (Tc-97)	100
Technetium-99m (Tc-99m)	100
Technetium-99 (Tc-99)	10
Tellurium-125m (Te-125m)	10
Tellurium-127m (Te-127m)	10
Tellurium-127 (Te-127)	100
Tellurium-129m (Te-129m)	10
Tellurium-129 (Te-129)	100
Tellurium 131m (Te-131m)	10
Tellurium-132 (Te-132)	10
Terbium-160 (Tb-160)	10
Thallium-200 (Tl-200)	100
Thallium-201 (Tl-201)	100
Thallium-202 (Tl-202)	100
Thallium-204 (Tl-204)	10
Thulium-170 (Tm-170)	10
Thulium-171 (Tm-171)	10
Tin-113 (Sn-113)	10

Tin-125 (Sn-125)	10
Tungsten-181 (W-181)	10
Tungsten-185 (W-185)	10
Tungsten-187 (W-187)	100
Vanadium-48 (V-48)	10
Xenon-131m (Xe-131m)	1,000
Xenon-133 (Xe-133)	100
Xenon-135 (Xe-135)	100
Ytterbium-175 (Yb-175)	100
Yttrium-87 (Y-87)	10
Yttrium-88 (Y-88)	10
Yttrium-90 (Y-90)	10
Yttrium-91 (Y-91)	10
Yttrium-92 (Y-92)	100
Yttrium-93 (Y-93)	100
Zinc-65 (Zn-65)	10
Zinc-69m (Zn-69m)	100
Zinc-69 (Zn-69)	1,000
Zirconium-93 (Zr-93)	10
Zirconium-95 (Zr-95)	10
Zirconium-97 (Zr-97)	10
Any radioactive material not listed above other than alpha emitting radioactive material.	0.1

(1) To convert microcuries (uCi) to SI units of kilobecquerels (kBq), multiply the above values by 37.

R313-19-100. Transportation.

For purposes of R313-19-100, 10 CFR 71.4, 71.10, 71.12, 71.13(a) and (b) through 71.16, 71.47, 71.81, 71.85 through 71.89, 71.97 (1998), and Appendix A to part 71 are incorporated by reference with the following clarifications or exceptions:

(1) The substitution of the following:

(a) "Issued by the Executive Secretary" for reference to "issued by the Commission" in 10 CFR 71.4;

(b) "Licensee" for reference to "licensee of the Commission";

(c) "R313-19-100(3)" for reference to "10 CFR 71.5";

(d) "R313-15-906(5)" for reference to "10 CFR 20.1906(e)";

(e) "R313-15-502" for reference to "10 CFR 20.1502"; and

(f) "Utah" for reference to "the United States" in 10 CFR 71.10(b)(3);

(2) The exclusion of the following:

(a) "close reflection by water" and "optimum interspersed hydrogenous moderation" in 10 CFR 71.4;

(b) "10 CFR 71.12(b)", "10 CFR 71.14(b)", and "10 CFR 71.16(b)"; and

(c) "subpart H" in 10 CFR 71.12(c)(2), 71.14(c)(2), 71.16(d)(2), and 71.81;

(3) Transportation of licensed material.

(a) Each licensee who transports licensed material outside the site of usage, as specified in the license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the U.S. Department of Transportation (DOT) regulations in 49 CFR 170 through 189 (1998) appropriate to the mode of transport.

(i) The licensee shall particularly note DOT regulations in the following areas:

(A) Packaging--49 CFR 173.1 through 173.13, 173.21 through 173.40, and 173.401 through 173.476;

(B) Marking and labeling--49 CFR 172.300 through 172.338, 172.400 through 172.407, 172.436 through 172.440, and 172.400 through 172.450;

(C) Placarding--49 CFR 172.500 through 172.560 and Appendices B and C;

(D) Accident reporting--49 CFR 171.15 and 171.16;

(E) Shipping papers and emergency information--49 CFR 172.200 through 172.205 and 172.600 through 172.606;

(F) Hazardous material employee training--49 CFR 172.700 through 172.704; and

(G) Hazardous material shipper/carrier registration--49 CFR 107.601 through 107.620.

(ii) The licensee shall also note DOT regulations pertaining to the following modes of transportation:

(A) Rail--49 CFR 174.1 through 174.86 and 174.700 through 174.750;

(B) Air--49 CFR 175;

(C) Vessel--49 CFR 176.1 through 176.99 and 176.700 through 176.715; and

(D) Public Highway--49 CFR 177 and 390 through 397.

(b) If DOT regulations are not applicable to a shipment of licensed material, the licensee shall conform to the standards and requirements of the DOT specified in paragraph (a) of this section to the same extent as if the shipment or transportation were subject to DOT regulations. A request for modification, wavier, or exemption from those requirements, and any notification referred to in those requirements, must be filed with, or made to, the Executive Secretary.

KEY: license, reciprocity, transportation, exemptions
March 12, 1999 19-3-104
Notice of Continuation May 1, 1997 19-3-108

R313. Environmental Quality, Radiation Control.
R313-28. Use of X-Rays in the Healing Arts.
R313-28-10. Purpose and Scope.

(1) The purpose of the rules in R313-28 is to prescribe the requirements for the use of x-rays in the healing arts.

(2) The rules set forth herein are adopted pursuant to the provisions of Sections 19-3-104(3) and 19-3-104(6).

R313-28-20. Definitions.

As used in R313-28, the following definitions apply:

"Accessible surface" means the external surface of the enclosure or housing provided by the manufacturer.

"Actual focal spot" refer to "Focal spot."

"Aluminum equivalent" means the thickness of aluminum, type 1100 alloy, affording the same attenuation, under specified conditions, as the material in question. The nominal chemical composition of type 1100 aluminum alloy is 99.00 percent minimum aluminum, 0.12 percent copper.

"Assembler" means individuals engaged in the business of assembling, replacing, or installing one or more components into an x-ray system or subsystem. The term includes the owner of an x-ray system or his or her employee or agent if they assemble components into an x-ray system that is subsequently used to provide professional or commercial services.

"Attenuation block" means a block or stack, having appropriate dimensions 20 cm by 20 cm by 3.8 cm, of type 1100 aluminum alloy or other materials having equivalent attenuation.

"Automatic EXPOSURE control" means a device which automatically controls one or more technique factors in order to obtain, at a preselected location, a required quantity of radiation. Phototimer and ion chamber devices are included in this category.

"Barrier" refer to "Protective barrier".

"Beam axis" means a line from the source through the centers of the x-ray fields.

"Beam-limiting device" means a device which provides a means to restrict the dimensions of the x-ray field.

"Certified components" means components of x-ray systems which are subject to regulations promulgated under Public Law 90-602, the Radiation Control for Health and Safety Act of 1968.

"Certified system" means an x-ray system which has one or more certified components.

"Changeable filters" means filters designed to be removed by the operator.

"Coefficient of variation (C)" means the ratio of the standard deviation to the mean value of a population of observations.

"Computed tomography" means the production of a tomogram by the acquisition and computer processing of x-ray transmission data.

"Control panel" means that part of the x-ray control upon which are mounted the switches, knobs, push buttons, and other hardware necessary for setting the technique factors.

"Cooling curve" means the graphical relationship between heat units stored and cooling time.

"CT" means computed tomography.

"CT gantry" means the tube housing assemblies, beam-limiting devices, detectors, and the supporting structures and frames which house these components.

"Dead-man switch" means a switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

"Diagnostic source assembly" means the tube housing assembly with a beam-limiting device attached.

"Diagnostic x-ray system" means an x-ray system designed for irradiation of part of the human body for the purpose of recording or visualization for diagnostic purposes.

"Entrance EXPOSURE rate" means the EXPOSURE free in air per unit time at the point where the useful beam enters the patient.

"Equipment" refer to "X-ray equipment".

"Field emission equipment" means equipment which uses an x-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

"Filter" means material placed in the useful beam to absorb preferentially selected radiations.

"Fluoroscopic imaging assembly" means a subsystem in which x-ray photons produce a fluoroscopic image. It includes equipment housing, electrical interlocks, the primary protective barrier, and structural material providing linkage between the image receptor and the diagnostic source assembly.

"Focal spot" means the area on the anode of the x-ray tube bombarded by the electrons accelerated from the cathode and from which the useful beam originates. Also referred to as "Actual focal spot."

"Gonad shield" means a protective barrier for the testes or ovaries.

"Half-value layer or HVL" means the thickness of specified material which attenuates the beam of radiation to an extent that the EXPOSURE rate is reduced to one-half of its original value. In this definition, the contribution of scatter radiation, other than that which might be present initially in the beam concerned, is deemed to be excluded.

"Healing arts screening" means the testing of a human population which is asymptomatic for the disease for which the screening is being performed. Excluded from this definition are those individuals whose risk factors for the disease are greater than for the population at large".

"Heat unit" means a unit of energy equal to the product of the peak kilovoltage, milliamperes, and seconds: for example, kVp times mA times seconds.

"HVL" refer to "half value layer."

"Image intensifier" means a device installed in its housing which instantaneously converts an x-ray pattern into a light image of higher energy density.

"Image receptor" means a device, for example, a fluorescent screen radiographic film, solid state detector, or gaseous detector, which transforms incident x-ray photons to produce a visible image or stores the information in a form which can be made into a visible image. In those cases where means are provided to preselect a portion of the image receptor, the term "image receptor" shall mean the preselected portion of the device.

"Irradiation" means the exposure of matter to ionizing radiation.

"Kilovolts peak" refer to "Peak tube potential".

"kV" means kilovolts.

"kVp" refer to "Peak tube potential."

"Lead equivalent" means the thickness of lead affording the same attenuation, under specified conditions, as the material in question.

"Leakage radiation" means radiation emanating from the diagnostic source assembly except for:

(a) the useful beam, and

(b) radiation produced when the exposure switch or timer is not activated.

"Leakage technique factors" means the technique factors associated with the diagnostic source assembly which are used in measuring leakage radiation. They are defined as follows:

(a) For diagnostic source assemblies intended for capacitor energy storage equipment, the maximum-rated peak tube potential and the maximum-rated number of exposures in an hour for operation at the maximum-rated peak tube potential with the quantity of charge per exposure being ten millicoulombs, ten milliampere seconds, or the minimum obtainable from the unit, whichever is larger.

(b) For diagnostic source assemblies intended for field emission equipment rated for pulsed operation, the maximum-rated peak tube potential and the maximum-rated number of x-ray pulses in an hour for operation at the maximum-rated peak tube potential.

(c) For other diagnostic source assemblies, the maximum-rated peak tube potential and the maximum-rated continuous tube current for the maximum-rated peak tube potential.

"Light field" means that area of the intersection of the light beam from the beam-limiting device and one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the illumination is one-fourth of the maximum in the intersection.

"mA" means tube current in milliamperes.

"mAs" means milliampere second or the product of the tube current in milliamperes and the time of exposure in seconds.

"Mammography imaging medical physicist" means an individual who conducts mammography surveys of mammography facilities.

"Mammography survey" means an evaluation of x-ray imaging equipment and oversight of a mammography facility's quality control program.

"Mobile x-ray equipment" refer to "X-ray equipment".

"Multiple scan average dose" means the average dose at the center of a series of scans, specified at the center of the axis of rotation of a CT x-ray system.

"New installation" means change, modification or relocation of new or existing shielding or equipment.

"Patient" means an individual subjected to healing arts examination, diagnosis, or treatment.

"PBL" refer to "Positive beam limitation."

"Peak tube potential" means the maximum value of the potential difference across the x-ray tube during an exposure.

"Phantom" means a volume of material behaving in a manner similar to tissue with respect to the attenuation and scattering of radiation.

"PID" refer to "Position indicating device."

"Portable x-ray equipment" refer to "X-ray equipment".

"Position indicating device (PID)" means a device, on dental x-ray equipment which indicates the beam position and establishes a definite source-surface (skin) distance. The device may or may not incorporate or serve as a beam-limiting device.

"Positive beam limitation" means the automatic or semi-automatic adjustment of an x-ray beam to the size of the selected image receptor, whereby exposures cannot be made without such adjustment.

"Primary beam scatter" means scattered radiation which has been deviated in direction or energy by materials irradiated by the primary beam.

"Primary protective barrier" refer to "Protective barrier".

"Protective apron" means an apron made of radiation absorbing materials, used to reduce radiation exposure.

"Protective barrier" means a barrier of radiation absorbing material used to reduce radiation exposure.

(a) "Primary protective barrier" means the material, excluding filters, placed in the useful beam to reduce the radiation exposure for protection purposes.

(b) "Secondary protective barrier" means the material which attenuates stray radiation.

"Protective glove" means a glove made of radiation absorbing materials used to reduce radiation exposure.

"Qualified expert" means an individual who has demonstrated to the satisfaction of the Board that the individual possesses the knowledge, training, and experience to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs.

"Radiation therapy simulation system" means a radiographic or fluoroscopic x-ray system intended for localizing the volume to be exposed during radiation therapy and for confirming the position and size of the therapeutic irradiation field.

"Radiograph" means an image receptor on which the image is created directly or indirectly by an x-ray pattern and results in a permanent record.

"Rating" means the operating limits of an x-ray system or subsystem as specified by the component manufacturer.

"Recording" means producing a permanent form of an image resulting from x-ray photons.

"Reference plane" means a plane which is displaced from and parallel to the tomographic plane.

"Scan" means the complete process of collecting x-ray transmission data for the production of a tomogram. Data can be collected simultaneously during a single scan for the production of one or more tomograms.

"Scan increment" means the amount of relative displacement of the patient with respect to the computer tomographic x-ray system between successive scans measured along the direction of such displacement.

"Scattered radiation" means radiation that, during passage through matter, has been deviated in direction, energy or both direction and energy. Also refer to "Primary Beam Scatter".

"Shutter" means a device attached to the tube housing assembly which can intercept the entire cross sectional area of the useful beam and which has a lead equivalency at least that of the tube housing assembly.

"SID" refer to "Source-image receptor distance".

"Source" means the focal spot of the x-ray tube.

"Source to image receptor distance" means the distance from the source to the center of the input surface of the image

receptor.

"Special purpose x-ray system" means that which is designed for irradiation of specific body parts.

"Spot film" means a radiograph which is made during a fluoroscopic examination to permanently record conditions which exist during that fluoroscopic procedure.

"Spot film device" means a device intended to transport or position a radiographic image receptor between the x-ray source and fluoroscopic image receptor, including a device intended to hold a cassette over the input end of an image intensifier for the purpose of making a radiograph.

"SSD" means the distance between the source and the skin entrance plane of the patient.

"Stationary x-ray equipment" refer to "X-ray equipment".

"Stray radiation" means the sum of leakage and scattered radiation.

"Technique factors" means the following conditions of operation.

(a) For capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs.

(b) For field emission equipment rated for pulsed operation, peak tube potential in kV and number of x-ray pulses.

(c) For other equipment, peak tube potential in kV and either;

(i) the tube current in mA and exposure time in seconds, or

(ii) the product of tube current and exposure time in mAs.

"Termination of irradiation" means the stopping of irradiation in a fashion which will not permit continuance of irradiation without the resetting of operating conditions at the control panel.

"Tomogram" means the depiction of the x-ray attenuation properties of a section through the body.

"Tomographic plane" means that geometric plane which is identified as corresponding to the output tomogram.

"Tomographic section" means the volume of an object whose x-ray attenuation properties are imaged in a tomogram.

"Tube" means an x-ray tube, unless otherwise specified.

"Tube housing assembly" means the tube housing with tube installed. It includes high-voltage or filament transformers and other appropriate elements when they are contained within the tube housing.

"Tube rating chart" means the set of curves which specify the rated limits of operation of the tube in terms of the technique factors.

"Useful beam" means the radiation emanating from the tube housing port or the radiation head and passing through the aperture of the beam limiting device when the switch or timer is activated.

"Visible area" means that portion of the input surface of the image receptor over which incident x-ray photons are producing a visible image.

"X-ray exposure control" means a device, switch, button, or other similar means by which an operator initiates or terminates the radiation exposure. The x-ray exposure control may include associated equipment, for example, timers and back-up timers.

"X-ray equipment" means an x-ray system, subsystem, or component thereof. Types of x-ray equipment are as follows:

(a) "Mobile" means x-ray equipment mounted on a permanent base with wheels or casters for moving while completely assembled.

(b) "Portable" means x-ray equipment designed to be hand-carried.

(c) "Stationary" means x-ray equipment which is installed in a fixed location.

"X-ray field" means that area of the intersection of the useful beam and one of the sets of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the EXPOSURE rate is one-fourth of the maximum in the intersection.

"X-ray high-voltage generator" means a device which transforms electrical energy from the potential supplied by the x-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the x-ray tube high-voltage switches, electrical protective devices, and other appropriate elements.

"X-ray system" means an assemblage of components for the controlled production of x-rays. It includes minimally an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

"X-ray tube" means an electron tube which is designed to be used primarily for the production of x-rays.

R313-28-31. General and Administrative Requirements.

(1) Persons shall not make, sell, lease, transfer, lend, or install x-ray equipment or the accessories used in connection with x-ray equipment unless the accessories and equipment, when properly placed in operation and properly used, will meet the applicable requirements of these rules.

(2) The registrant shall be responsible for directing the operation of the x-ray machines which are under the registrant's administrative control. The registrant or registrant's agent shall assure that the requirements of R313-28-31(2)(a) through R313-28-31(2)(i) are met in the operation of the x-ray machines.

(a) An x-ray machine which does not meet the provisions of these rules shall not be operated for diagnostic purposes, when directed by the Executive Secretary.

(b) Individuals who will be operating the x-ray equipment shall be instructed in the registrant's written radiation safety program and be qualified in the safe use of the equipment. Required operator qualifications are listed in R313-28-350.

(c) The registrant of a facility shall create and make available to x-ray operators written safety procedures, including patient holding and restrictions of the operating technique required for the safe operation of the x-ray systems. Individuals who operate x-ray systems shall be responsible for complying with these rules.

(d) Except for individuals who cannot be moved out of the room and the patient being examined, only the staff and ancillary personnel or other individuals needed for the medical procedure or training shall be present in the room during the radiographic exposure and shall be positioned as follows:

(i) individuals other than the patient shall be positioned so that no part of the body will be struck by the useful beam unless

protected by not less than 0.5 mm lead equivalent material;

(ii) the x-ray operator, other staff, ancillary personnel and other individuals needed for the medical procedure shall be protected from primary beam scatter by protective aprons or barriers unless it can be shown that by virtue of distances employed, EXPOSURE levels are reduced to the limits specified in R313-15-201; and

(iii) patients who are not being examined and cannot be removed from the room shall be protected from the primary beam scatter by whole body protective barriers of not less than 0.25 mm lead equivalent material or shall be so positioned that the nearest portion of the body is at least two meters from both the tube head and nearest edge of the image receptor.

(e) For patients who have not passed reproductive age, gonad shielding of not less than 0.5 mm lead equivalent material shall be used during radiographic procedures in which the gonads are in the useful beam, except for cases in which this would interfere with the diagnostic procedure.

(f) Individuals shall not be exposed to the useful beam except for healing arts purposes unless the exposure has been authorized by a licensed practitioner of the healing arts. Deliberate exposures for the following purposes are prohibited:

(i) exposure of an individual for training, demonstration or other non-healing arts purposes; and

(ii) exposure of an individual for the purpose of healing arts screening except as authorized by R313-28-31(2)(i).

(g) When a patient or film must be provided with auxiliary support during a radiation exposure:

(i) mechanical holding devices shall be used when the technique permits. The written procedures, required by R313-28-31(2)(c), shall list individual projections where mechanical holding devices cannot be utilized;

(ii) written safety procedures, as required by R313-28-31(2)(c), shall indicate the requirements for selecting an individual to hold patients or films and the procedure that individual shall follow;

(iii) the individual holding patients or films during radiographic examinations shall be instructed in personal radiation safety and protected as required by R313-28-31(2)(d)(i);

(iv) Individuals shall not be used routinely to hold film or patients;

(v) In those cases where the patient must hold the film, except during intraoral examinations, portions of the body other than the area of clinical interest struck by the useful beam shall be protected by not less than 0.5 mm lead equivalent material; and

(vi) Facilities shall have protective aprons and gloves available in sufficient numbers to provide protection to personnel who are involved with x-ray operations and who are otherwise not shielded.

(h) Personnel monitoring. Individuals who are associated with the operation of an x-ray system are subject to the applicable requirements of R313-15.

(i) Healing arts screening. Persons proposing to conduct a healing arts screening program shall not initiate the program without prior approval of the Executive Secretary or in the case of a research program, by an Investigational Review Board which has been approved by the United States Food and Drug Administration. When requesting approval, that person shall submit the information outlined in R313-28-400. If information submitted becomes invalid or outdated, the Executive Secretary shall be notified immediately.

(3) Maintenance of records and information. The registrant shall maintain at least the following information for each x-ray machine:

(a) model numbers of major components;

(b) record of surveys or calculations to demonstrate compliance with R313-15-302, calibration, maintenance and modifications performed on the x-ray machine; and

(c) a shielding design report for the x-ray suite which states assumed values for workload and use factors and includes a drawing of surrounding areas showing assumed values for occupancy factors.

(4) X-ray records. Facilities shall maintain an x-ray record containing the patient's name, the types of examinations, and the dates the examinations were performed. When the patient or film must be provided with human auxiliary support, the name of the human holder shall be recorded. The registrant shall retain these records for three years after the record is made.

(5) Portable or mobile equipment shall be used only for examinations where it is impractical to transfer the patient to a stationary radiographic installation.

(6) Procedures and auxiliary equipment designed to minimize patient and personnel exposure commensurate with the needed diagnostic information shall be utilized.

(a) The speed of the screen and film combinations used shall be the fastest speed consistent with the diagnostic objective of the examinations. Film cassettes without intensifying screens shall not be used for routine diagnostic radiological imaging, with the exception of standard film packets for intra-oral use in dental radiography. If the requirements of R313-28-31(6)(a) cannot be met, an exemption may be requested pursuant to R313-12-55.

(b) The radiation exposure to the patient shall be the minimum exposure required to produce images of good diagnostic quality.

(c) X-ray systems, other than fluoroscopic, computed tomography, dental or veterinary units, shall not be utilized in procedures where the source to patient distance is less than 30 centimeters.

R313-28-32. Plan Review.

(1) Prior to construction of a room in which x-ray equipment is to be installed, a shielding design report shall be submitted to the Executive Secretary or a Qualified Expert for review and approval. The required information is denoted in R313-28-200 and R313-28-450.

(2) If the services of a qualified expert are used to review and approve the shielding design report, a copy of the approved report must be submitted to the Executive Secretary within 14 working days.

(3) The approval of such plans shall not preclude the requirement of additional modifications should a subsequent analysis of operating conditions, for example, a change in workload or use and occupancy factors, indicate the possibility of an individual receiving a dose in excess of the limits prescribed in R313-15.

R313-28-35. General Requirements for Diagnostic X-Ray Systems.

In addition to other requirements of R313-28, all diagnostic x-ray systems shall meet the following requirements:

(1) Warning label. The control panel containing the main power switch shall bear the warning statement, legible and accessible to view: "WARNING: This x-ray unit may be dangerous to patient and operator unless safe exposure factors and operating instructions are observed."

(2) Battery charge indicator. On battery powered generators, visual means shall be provided on the control panel to indicate whether the battery is in a state of charge adequate for proper operation.

(3) Leakage radiation from the diagnostic source assembly. The leakage radiation from the diagnostic source assembly measured at a distance of one meter in any direction from the source shall not exceed 25.8 uC/kg (100 milliroentgens) in one hour when the x-ray tube is operated at its leakage technique factors.

(4) Radiation from components other than the diagnostic source assembly. The radiation emitted by a component other than the diagnostic source assembly shall not exceed 0.516 uC/kg (two milliroentgens) in one hour at five centimeters from accessible surfaces of the component when it is operated in an assembled x-ray system under the conditions for which it was designed. Compliance shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than 20 centimeters.

(5) Beam quality.

(a) The half value layer of the useful beam for a given x-ray tube potential shall not be less than the values shown in R313-28-35, Table I. If it is necessary to determine such half-value layer at an x-ray tube potential which is not listed in Table I, linear interpolation or extrapolation may be made.

TABLE I

DESIGN OPERATING RANGE (KILO VOLTS PEAK	MEASURED POTENTIAL (KILOVOLTS PEAK)	DENTAL INTRA-ORAL MANUFACTURED BEFORE AUGUST 1, 1974 AND ON OR AFTER DECEMBER 1, 1980	ALL OTHER DIAGNOSTIC X-RAY SYSTEMS
Below 51	30	(use prohibited)	0.3
	40	(use prohibited)	0.4
	50	1.5	0.5
	51	1.5	1.2
	60	1.5	1.3
	70	1.5	1.5
Above 70	71	2.1	2.1
	80	2.3	2.3
	90	2.5	2.5
	100	2.7	2.7
	110	3.0	3.0
	120	3.2	3.2
	130	3.5	3.5
	140	3.8	3.8
	150	4.1	4.1

(b) For capacitor discharge equipment, compliance with the requirements of R313-28-35(5)(a) shall be determined with the system fully charged and a setting of 10 mAs for exposures.

(c) The required minimal half-value layer of the useful beam shall include the filtration contributed by materials which are permanently present between the focal spot of the tube and the patient.

(d) Filtration control. For x-ray systems which have variable kVp and variable filtration for the useful beam, a device shall link the kVp selector with the filters and shall prevent an exposure unless the minimum amount of filtration necessary to produce the HVL required by R313-28-35(5)(a) is in the useful beam for the given kVp which has been selected.

(6) Multiple tubes. When two or more radiographic tubes are controlled by one exposure switch, the tube or tubes which have been selected shall be clearly indicated prior to initiation of the exposure. For equipment manufactured after August 1, 1974, indications shall be both on the x-ray control panel and at or near the tube housing assembly which has been selected.

(7) Mechanical support of tube head. The tube housing assembly supports shall be adjusted so that the tube housing assembly will remain stable during an exposure unless the tube housing movement during exposure is a designed function of the x-ray system.

(8) Technique indicators.

(a) The technique factors to be used during an exposure shall be indicated before the exposure begins, except when automatic EXPOSURE controls are used, in which case the technique factors which are set prior to the exposure shall be indicated.

(b) On equipment having fixed technique factors, the requirements, in R313-28-35(8)(a) may be met by permanent markings. Indication of technique factors shall be visible from the operator's position except in the case of spot films made by the fluoroscopist.

(9) Maintaining compliance. Diagnostic x-ray systems and their associated components certified pursuant to the provisions of 21 CFR Part 1020 shall be maintained in compliance with applicable requirements of that standard.

(10) Locks. All position locking, holding, and centering devices on x-ray system components and systems shall function as intended.

(11) X-ray systems which have been granted a variance by the Director, Center for Devices and Radiological Health, Food and Drug Administration (Director), from the performance standards for ionizing radiation emitting products, in accordance with 21 CFR 1010.4, 1996 edition, shall be deemed to satisfy the requirements in R313-28 that corresond to the variance granted by the Director. The registrant shall insure that labeling pursuant to CFR 1010.5(f) remains legible and visible on the x-ray system.

R313-28-40. Fluoroscopic X-Ray Systems.

All fluoroscopic x-ray systems used shall be image intensified and meet the following requirements:

(1) Primary barrier.

(a) The fluoroscopic imaging assembly shall be provided with a primary protective barrier which intercepts the entire cross section of the useful beam at SIDs for which the unit was designed.

(b) The x-ray tube used for fluoroscopy shall not produce x-rays unless the barrier is in position to intercept the entire useful beam.

(2) Fluoroscopic beam limitation.

(a) For certified fluoroscopic systems with or without a

spot film device neither the length nor the width of the x-ray field in the plane of the image receptor shall exceed that of the visible area of the image receptor by more than three percent of the SID. The sum of the excess length and the excess width shall be no greater than four percent of the SID.

(b) For uncertified fluoroscopic systems with a spot film device, the x-ray beam with the shutters fully open, during fluoroscopy or spot filming, shall be no larger than the largest image receptor size for which the device is designed. Measurements shall be made at the minimum SID available but at no less than 20 centimeters table top to the film plane distance.

(c) For uncertified fluoroscopic systems without a spot film device, the requirements of R313-28-40(1) apply.

(d) Other requirements for fluoroscopic beam limitation:

(i) means shall be provided to permit further limitation of the field. Beam-limiting devices manufactured after May 22, 1979, and incorporated in equipment with a variable SID or visible area of greater than 300 square centimeters shall be provided with means for stepless adjustment of the x-ray field;

(ii) equipment with a fixed SID and a visible area of 300 square centimeters or less shall be provided with either stepless adjustment of the x-ray field or with means to further limit the x-ray field size at the plane of the image receptor to 125 square centimeters or less;

(iii) if provided, stepless adjustment shall at the greatest SID, provide continuous field sizes from the maximum attainable to a field size of five centimeters by five centimeters or less;

(iv) for equipment manufactured after February 25, 1978, when the angle between the image receptor and beam axis is variable, means shall be provided to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor; and

(v) for non-circular x-ray fields used with circular image receptors, the error in alignment shall be determined along the length and width dimensions of the x-ray field which pass through the center of the visible area of the image receptor.

(3) Spot-film beam limitation. Spot-film devices shall meet the following requirements:

(a) means shall be provided between the source and the patient for adjustment of the x-ray field size in the plane of the film to the size of that portion of the film which has been selected on the spot film selector. Adjustments shall be automatically accomplished except when the x-ray field size in the plane of the film is smaller than that of the selected portion of the film. For spot film devices manufactured after June 21, 1979, if the x-ray field size is less than the size of the selected portion of the film, the means for adjustment of the field size shall be only at the operator's option;

(b) neither the length nor the width of the x-ray field in the plane of the image receptor shall differ from the corresponding dimensions of the selected portion of the image receptor by more than three percent of the SID when adjusted for full coverage of the selected portion of the image receptor. The sum, without regard to sign, of the length and width differences shall not exceed four percent of the SID;

(c) it shall be possible to adjust the x-ray field size in the plane of the film to a size smaller than the selected portion of the film. The minimum field size at the greatest SID shall be equal to, or less than, five by five centimeters;

(d) the center of the x-ray field in the plane of the film shall be aligned with the center of the selected portion of the film to within two percent of the SID; and

(e) on spot film devices manufactured after February 25, 1978, if the angle between the plane of the image receptor and beam axis is variable, means shall be provided to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor, and compliance shall be determined with the beam axis indicated to be perpendicular to the plane of the image receptor.

(4) Override. If a means exists to override the automatic x-ray field size adjustments required in R313-28-40(2) and (3), that means:

(a) shall be designed for use only in the event of system failure;

(b) shall incorporate a signal visible at the fluoroscopist's position which will indicate whenever the automatic field size adjustment is overridden; and

(c) shall be clearly and durably labeled as follows: FOR X-RAY FIELD LIMITATION SYSTEM FAILURE.

(5) Activation of the fluoroscopic tube. X-ray production in the fluoroscopic mode shall be controlled by a dead-man switch. When recording serial fluoroscopic images, the fluoroscopist shall be able to terminate the x-ray exposure immediately, but means may be provided to permit completion of a single exposure of the series in process.

(6) Entrance EXPOSURE rate allowable limits.

(a) For fluoroscopic equipment manufactured before May 19, 1995, the following requirements apply:

(i) fluoroscopic equipment which is provided with automatic exposure rate control shall not be operable at combinations of tube potential and current which will result in an EXPOSURE rate in excess of 2.58 mC/kg (ten roentgens) per minute at the point where the center of the useful beam enters the patient, except:

(A) during recording of fluoroscopic images, or

(B) when an optional high level control is provided. When so provided, the equipment shall not be operable at combinations of tube potential and current which will result in an EXPOSURE rate in excess of 1.29 mC/kg (five roentgens) per minute at the point where the center of the useful beam enters the patient unless the high level control is activated. Special means of activation of high level controls shall be required. The high level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high level control is being employed.

(ii) fluoroscopic equipment which is not provided with automatic exposure rate control shall not be operable at combinations of tube potential and current which will result in a EXPOSURE rate in excess of 1.29 mC/kg (five roentgens) per minute at the point where the center of the useful beam enters the patient, except:

(A) during recording of fluoroscopic images, or

(B) when an optional high level control is activated. Special means of activation of high level controls shall be required. The high level control shall be operable only when

continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high level control is being employed.

(iii) fluoroscopic equipment which is provided with both automatic exposure rate control and a manual mode shall not be operable at combinations of tube potential and current that will result in an exposure rate of 2.58 mC/kg (ten roentgens) per minute in either mode at the point where the center of the useful beam enters the patient except:

(A) during recording of fluoroscopic images, or

(B) when an optional high level control is provided. When so provided, the equipment shall not be operable at combinations of tube potential and current which will result in an EXPOSURE rate in excess of 1.29 mC/kg (five roentgens) per minute at the point where the center of the useful beam enters the patient unless the high level control is activated. Special means of activation of high level controls shall be required. The high level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high level control is being employed.

(b) For fluoroscopic equipment manufactured on and after May 19, 1995, the following requirements apply:

(i) fluoroscopic equipment operable at combinations of tube potential and current which will result in an EXPOSURE rate greater than 1.29 mC/kg (five roentgens) per minute at the point where the center of the useful beam enters the patient shall be equipped with automatic exposure rate control. Provision for manual selection of technique factors may be provided.

(ii) fluoroscopic equipment shall not be operable at combinations of tube potential and current which will result in an EXPOSURE rate in excess of 2.58 mC/kg (ten roentgens) per minute at the point where the center of the useful beam enters the patient except:

(A) during recording of images from an x-ray image-intensifier tube using photographic film or a video camera when the x-ray source is operated in pulsed mode, or

(B) when an optional high level control is activated. When the high level control is activated, the equipment shall not be operable at combinations of tube potential and current which will result in an EXPOSURE rate in excess of 5.16 mC/kg (20 roentgens) per minute at the point where the center of the useful beam enters the patient. Special means of activation of high level controls shall be required. The high level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high level control is being employed.

(c) Compliance with the requirements of R313-28-40(6) shall be determined as follows:

(i) if the source is below the x-ray table, the EXPOSURE rate shall be measured one centimeter above the tabletop or cradle;

(ii) if the source is above the x-ray table, the EXPOSURE rate shall be measured at 30 centimeters above the tabletop with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement;

(iii) for a C-arm type of fluoroscope, the exposure rate shall be measured 30 centimeters from the input surface of the fluoroscopic imaging assembly, with the source positioned at available SID's, provided that the end of the beam-limiting device or spacer is no closer than 30 centimeters from the input surface of the fluoroscopic imaging assembly; or

(iv) for a lateral type fluoroscope, the exposure rate shall be measured at a point 15 centimeters from the centerline of the x-ray table and in the direction of the x-ray source with the end of the beam-limiting device or spacer positioned as close as possible to the point of measurement. If the tabletop is movable, it shall be positioned as close as possible to the lateral x-ray source with the end of the beam-limiting device or spacer no closer than 15 centimeters to the x-ray table.

(d) Fluoroscopic radiation therapy simulation systems are exempt from the requirements of R313-28-40(6).

(7) Measurement of entrance EXPOSURE rates shall be performed by a qualified expert for both maximum and typical values as follows:

(a) measurements shall be made annually or after maintenance of the system which might affect the EXPOSURE rate;

(b) results of these measurements shall be posted where the fluoroscopist may have ready access to the results while using the fluoroscope and in the record required in R313-28-31(3)(b). The measurement results shall be stated in roentgens per minute and include the machine settings used in determining results. The name of the person performing the measurements and the date the measurements were performed shall be included in the results;

(c) conditions of the annual measurement of maximum entrance EXPOSURE rate shall be performed as follows:

(i) the measurement shall be made under the conditions that satisfy the requirements of R313-28-40(6)(c);

(ii) the kVp, mA, and other selectable parameters shall be adjusted to those settings which give the maximum entrance EXPOSURE rate; and

(iii) x-ray systems that incorporate automatic exposure rate control shall have sufficient attenuative material placed in the useful beam to produce the maximum output of that system; and

(d) conditions of the annual measurement of typical entrance EXPOSURE rate are as follows:

(i) the measurement shall be made under the conditions that satisfy the requirements of R313-28-40(6)(c);

(ii) the kVp, mA, and other selectable parameters shall be those settings typical of clinical use of the x-ray system; and

(iii) the x-ray system that incorporates automatic EXPOSURE rate control shall have an appropriate phantom placed in the useful beam to produce a milliamperage and kilovoltage typical of the use of the x-ray system.

(8) Barrier transmitted radiation rate limits.

(a) The EXPOSURE rate due to transmission through the primary protective barrier with the attenuation block in the useful beam, combined with radiation from the image intensifier, if provided, shall not exceed 0.516 uC/kg (two milliroentgens) per hour at ten centimeters from accessible surfaces of the fluoroscopic imaging assembly beyond the plane of the image receptor for each mC/kg (roentgen) per minute of entrance EXPOSURE rate.

(b) Measuring compliance of barrier transmission.

(i) The EXPOSURE rate due to transmission through the primary protective barrier combined with radiation from the

image intensifier shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than 20 centimeters.

(ii) If the source is below the tabletop, the measurement shall be made with the input surface of the fluoroscopic imaging assembly positioned 30 centimeters above the tabletop.

(iii) If the source is above the tabletop and the SID is variable, the measurement shall be made with the end of the beam-limiting device or spacer as close to the tabletop as it can be placed, provided that it shall not be closer than 30 centimeters.

(iv) Movable grids and compression devices shall be removed from the useful beam during the measurement.

(9) Indication of potential and current. During fluoroscopy and cinefluorography, x-ray tube potential and current shall be continuously indicated.

(10) Source-skin distance. The source to skin distance shall not be less than:

(a) 38 centimeters on stationary fluoroscopic systems manufactured on or after August 1, 1974;

(b) 35.5 centimeters on stationary fluoroscopic systems manufactured prior to August 1, 1974;

(c) 30 centimeters on all mobile fluoroscopes; or

(d) 20 centimeters for all mobile fluoroscopes when used for specific surgical applications.

(11) Fluoroscopic timer.

(a) Means shall be provided to preset the cumulative on-time of the fluoroscopic x-ray tube. The maximum cumulative time of the timing device shall not exceed five minutes without resetting.

(b) A signal audible to the fluoroscopist shall indicate the completion of a preset cumulative on-time. The signal shall continue to sound while x-rays are produced until the timing device is reset.

(12) Control of scatter radiation.

(a) The tables of fluoroscopic assemblies when combined with normal operating procedures shall provide protection from scatter radiation so that unprotected parts of a staff or ancillary individual's body shall not be exposed to unattenuated scattered radiation which originates from under the table. The attenuation required shall be not less than 0.25 mm lead equivalent.

(b) Equipment configuration when combined with procedures shall not allow portions of a staff member's or ancillary person's body, except the extremities, to be exposed to unattenuated scattered radiation emanating from above the tabletop unless:

(i) the radiation has passed through not less than 0.25 mm lead equivalent material including, but not limited to, drapes, bucky-slot cover panel, or self supporting curtains, in addition to the lead equivalency provided by the protective apron referred to in R313-28-31(2)(d),

(ii) that individual is at least 120 centimeters from the center of the useful beam, or

(iii) it is not feasible to attach shielding to special procedures equipment and personnel are wearing protective aprons.

(13) Spot film exposure reproducibility. Fluoroscopic systems equipped with radiographic spot film mode shall meet the exposure reproducibility requirements of R313-28-54.

(14) Radiation therapy simulation systems. Radiation therapy simulation systems shall be exempt from all the requirements R313-28-40(1), (8), and (11) provided that:

(a) the systems are designed and used in such a manner that no individual other than the patient is in the x-ray room during periods of time when the system is producing x-rays; and

(b) the systems which do not meet the requirements of R313-28-40(11) are provided with a means of indicating the cumulative time that an individual patient has been exposed to x-rays. Procedures shall require, in these cases, that the timer be reset between examinations.

R313-28-51. Radiographic Systems Other than Fluoroscopic, Dental Intraoral, or Computed Tomography -- Beam Limitation.

The useful beam shall be limited to the area of clinical interest and show evidence of collimation. This shall be deemed to have been met if a positive beam limiting device meeting the manufacturer's specifications or the requirements of R313-28-300 has been properly used or if evidence of collimation is shown on at least three sides or three corners of the film, for example, projections of the shutters of the collimator, cone cutting at the corners or a border at the film's edge.

(1) General purpose stationary and mobile x-ray systems.

(a) Only x-ray systems provided with a means for independent stepless adjustment of at least two dimensions of the x-ray field shall be used.

(b) A method shall be provided for visually defining the perimeter of the x-ray field. The total misalignment of the edges of the visually defined field with the respective edges of the x-ray field along either the length or width of the visually defined field shall not exceed two percent of the distance from the source to the center of the visually defined field when the surface upon which it appears is perpendicular to the axis of the x-ray beam.

(c) The Board may grant an exemption on non-certified x-ray systems to R313-28-51(1)(a) and (b) provided the registrant makes a written application for the exemption and in that application:

(i) demonstrates it is impractical to comply with R313-28-51(1)(a) and (b); and

(ii) demonstrates the purpose of R313-28-51(1)(a) and (b) will be met by other methods.

(2) In addition to the requirements of R313-28-51(1) above, stationary general purpose x-ray systems, both certified and non-certified shall meet the following requirements:

(a) a method shall be provided to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor, to align the center of the x-ray field with respect to the center of the image receptor to within two percent of the SID, and to indicate the SID to within two percent;

(b) the beam-limiting device shall numerically indicate the field size in the plane of the image receptor to which it is adjusted; and

(c) indication of field size dimensions and SID's shall be specified in inches or centimeters and shall be such that aperture adjustments result in x-ray field dimensions in the plane of the image receptor which correspond to those of the image receptor to within two percent of the SID when the beam axis is

perpendicular to the plane of the image receptor.

(3) Radiographic equipment designed for only one image receptor size at a fixed SID shall be provided with means to limit the field at the plane of the image receptor to dimensions no greater than those of the image receptor, and to align the center of the x-ray field with the center of the image receptor to within two percent of the SID, or shall be provided with means to both size and align the x-ray field so that the x-ray field at the plane of the image receptor does not extend beyond the edges of the image receptor.

(4) Special purpose x-ray systems.

(a) Means shall be provided to limit the x-ray field in the plane of the image receptor so that the x-ray field does not exceed each dimension of the image receptor by more than two percent of the SID when the axis of the x-ray beam is perpendicular to the plane of the image receptor.

(b) Means shall be provided to align the center of the x-ray field with the center of the image receptor to within two percent of the SID, or means shall be provided to both size and align the x-ray field so that the x-ray field at the plane of the image receptor does not extend beyond the edges of the image receptor. Compliance shall be determined with the axis of the x-ray beam perpendicular to the plane of the image receptor.

(c) R313-28-51(4)(a) and R313-28-51(4)(b) may be met with a system that meets the requirements for a general purpose x-ray system as specified in R313-28-51(1) or, when alignment means are also provided, may be met with either;

(i) an assortment of removable, fixed-aperture, beam-limiting devices sufficient to meet the requirements for the combination of image receptor sizes and SID's for which the unit is designed with the beam limiting device having clear and permanent markings to indicate the image receptor size and SID for which it is designed; or

(ii) a beam-limiting device having multiple fixed apertures sufficient to meet the requirement for the combinations of image receptor sizes and SID's for which the unit is designed. Permanent, clearly legible markings shall indicate the image receptor size and SID for which the aperture is designed and shall indicate which aperture is in position for use.

R313-28-52. Radiographic Systems Other Than Fluoroscopic, Dental Intraoral, or Computed Tomography -- Radiation Exposure Control Devices.

(1) Exposure Initiation. Means shall be provided to initiate the radiation exposure by a deliberate action on the part of the operator, for example, the depression of a switch. Radiation exposure shall not be initiated without a deliberate action. In addition, it shall not be possible to initiate an exposure when the timer is set to a "zero" or "off" position if either position is provided.

(2) Exposure termination. Means shall be provided to terminate the exposure at a preset time interval, preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor. Except for dental panoramic systems, termination of an exposure shall cause automatic resetting of the timer to its initial setting or to "zero."

(3) Manual Exposure Control: An x-ray control shall be incorporated into x-ray systems so that an exposure can be terminated at times except for:

(a) exposure of one-half second or less; or

(b) during serial radiography when means shall be provided to permit completion of a single exposure of the series in process.

(4) Automatic EXPOSURE controls, phototimers. When automatic EXPOSURE control is provided:

(a) indication shall be made on the control panel when this mode of operation is selected;

(b) when the x-ray tube potential is equal to or greater than 51 kVp, the minimum exposure time for field emission equipment rated for pulsed operation shall be equal to or less than the interval equivalent to two pulses; and

(c) the minimum exposure time for all equipment other than that specified in R313-28-52(4)(b) shall be equal to or less than 1/60 second or a time interval required to deliver five mAs, whichever is greater.

(5) Exposure Indication. Means shall be provided for visual indication observable at or from the operator's protected position whenever x-rays are produced. In addition, a signal audible to the operator shall indicate that the exposure has terminated.

(6) Exposure Duration, Timer, Linearity. For systems having independent selection of exposure time settings, the average ratio of exposure to the indicated milliampere-seconds product obtained at two consecutive timer settings or at two settings not differing by more than a factor of two shall not differ by more than 0.10 times their sum.

(7) Exposure Control Location. The x-ray exposure control shall be placed so that the operator can view the patient while making the exposure.

(8) Operator Protection.

(a) Stationary x-ray systems shall be required to have the x-ray exposure switch permanently mounted in a protected area.

(b) Mobile and portable x-ray systems which are:

(i) used continuously for greater than one week at the same location, one room or suite, shall meet the requirements of R313-28-52(8)(a); or

(ii) used for less than one week at one location, one room, or suite shall be provided with either a protective barrier at least two meters (6.5 feet) high for operator protection during exposures, or means shall be provided to allow the operator to be at least 2.7 meters (nine feet) from the tube housing assembly during the exposure.

R313-28-53. Radiographic Systems Other Than Fluoroscopic, or Dental Intraoral Systems -- Source-to-Skin or Receptor Distance.

Mobile or portable radiographic systems shall be provided with a means to limit the source-to-skin distance to 30 or more centimeters.

R313-28-54. Radiographic Systems Other Than Fluoroscopic, or Dental Intraoral Systems -- Exposure Reproducibility.

When technique factors, including control panel selections associated with automatic exposure control systems, are held constant the coefficient of variation of exposure for both manual and automatic exposure control systems shall not exceed 0.05. This requirement applies to clinically used techniques.

R313-28-55. Radiographic Systems - Standby Radiation From Capacitor Discharge Equipment.

Radiation emitted from the x-ray tube when the system is fully charged and the exposure switch or timer is not activated shall not exceed a rate of 0.516 uC/kg (two milliroentgens) per hour at five centimeters from accessible surfaces of the diagnostic source assembly, with the beam-limiting device fully open.

R313-28-56. Radiographic Systems Other Than Fluoroscopic, or Dental Intraoral Systems -- Accuracy.

Deviation of measured technique factors from indicated values of kVp and exposure time shall not exceed the limits specified for that system by its manufacturer. In the absence of manufacturer's specifications, the deviation shall not exceed ten percent of the indicated value for kVp and ten percent of the indicated value for times greater than 50 milliseconds.

R313-28-57. Radiographic Systems Other Than Fluoroscopic, or Dental Intraoral Systems -- mA/mAs Linearity.

The following requirements apply when the equipment is operated on a power supply as specified by the manufacturer for fixed x-ray tube potentials within the range of 40 percent to 100 percent of the maximum rated potentials.

(1) Equipment having independent selection of x-ray tube current, mA. Where the tube current is continuous, the average ratios of exposure to the indicated milliampere-seconds product, C/kg/mAs or mR/mAs, obtained at two consecutive tube current settings or at two settings differing by no more than a factor of two shall not differ by more than 0.10 times their sum.

(2) Equipment having a combined x-ray tube current-exposure time product, mAs, selector, but not a separate tube current, mA, selector. Where the tube current is continuous, the average ratios of exposure to the indicated milliampere-seconds product, C/kg/mAs or mR/mAs, obtained at two consecutive milliampere-seconds settings or at two settings differing by no more than a factor of two shall not differ by more than 0.10 times their sum.

R313-28-80. Intraoral Dental Radiographic Systems.

In addition to the provisions of R313-28-31, R313-28-32 and R313-28-35, the requirements of this section apply to x-ray equipment and associated facilities used for dental radiography. Criteria for extraoral dental radiographic systems are covered in R313-28-51, R313-28-52 and R313-28-53. Intraoral dental radiographic systems used must meet the requirements of R313-28-80.

(1) Source-to-Skin distance (SSD). X-ray systems designed for use with an intraoral image receptor shall be provided with means to limit source-to-skin distance to not less than:

(a) 18 centimeters if operable above 50 kilovolts peak, or

(b) 10 centimeters if not operable above 50 kilovolts peak.

(2) Field limitation. Radiographic systems designed for use with an intraoral image receptor shall be provided with means to limit the x-ray field so that:

(a) if the minimum source-to-skin distance (SSD) is 18 centimeters or more, the x-ray field, at the minimum SSD, shall be containable in a circle having a diameter of no more than seven centimeters; and

(b) if the minimum SSD is less than 18 centimeters, the x-ray field, at the minimum SSD, shall be containable in a circle having a diameter of no more than six centimeters.

(3) Exposure Initiation.

(a) Means shall be provided to initiate the radiation exposure by a deliberate action on the part of the operator, for example, the depression of a switch. Radiation exposure shall not be initiated without a deliberate action; and

(b) It shall not be possible to make an exposure when the timer is set to a "zero" or "off" position if either position is provided.

(4) Exposure Termination.

(a) Means shall be provided to terminate the exposure at a preset time interval, preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor.

(b) An x-ray exposure control shall be incorporated into x-ray systems so that an exposure of more than 0.5 seconds can be terminated immediately by the operator.

(c) Termination of an exposure shall cause automatic resetting of the timer to its initial setting or to "zero."

(5) Exposure Indication. Means shall be provided for visual indication, observable from the operator's protected position, whenever x-rays are produced. In addition, a signal audible to the operator shall indicate that the exposure has terminated.

(6) Timer Linearity. For systems having independent selection of exposure time settings, the average ratio of exposure to the indicated milliampere-seconds product obtained at two consecutive timer settings or at two settings not differing by more than a factor of two shall not differ by more than 0.10 times their sum.

(7) Exposure Control Location and Operator Protection.

(a) Stationary x-ray systems shall be required to have the x-ray exposure control mounted in a protected area or a means to allow the operator to be at least 2.7 meters (9.0 feet) from the tube housing assembly while making exposures; and

(b) Mobile and portable x-ray systems which are:

(i) used for greater than one week in the same location, for example, a room or suite, shall meet the requirements of R313-28-80(7)(a); or

(ii) used for less than one week in the same location shall be provided with either a protective barrier at least two meters high for operator protection, or means to allow the operator to be at least 2.7 meters (nine feet) from the tube housing assembly while making exposures.

(8) Exposure Reproducibility. When all technique factors are held constant, the coefficient of variation of exposure shall not exceed 0.05 for certified x-ray systems or 0.10 for non-certified x-ray systems. This requirement applies to clinically used techniques.

(9) mA/mAs Linearity. The following requirements apply when the equipment is operated on a power supply as specified by the manufacturer for fixed x-ray tube potentials within the range of 40 to 100 percent of the maximum rated potentials.

(a) For equipment having independent selection of x-ray tube current, the average ratios of exposure to the indicated

milliampere-seconds product obtained at two consecutive tube current settings or, when the tube current selection is continuous, two settings differing by no more than a factor of two shall not differ by more than 0.10 times their sum.

(b) For equipment having a combined x-ray tube current-exposure time product selector but not a separate tube current selector, the average ratios of exposure to the indicated milliampere-seconds product obtained at two consecutive mAs selector settings, or when the mAs selector provides continuous selection, at two settings differing by no more than a factor of two shall not differ by more than 0.10 times their sum.

(10) Accuracy. Deviation of technique factors from indicated values shall not exceed the limits specified for that system by its manufacturer. In the absence of manufacturer's specifications the deviation shall not exceed ten percent of the indicated value.

(11) Administrative Controls.

(a) Patient and film holding devices shall be used when the technique permits and holding is required.

(b) The x-ray tube housing and the position indicating device shall not be hand-held during an exposure.

(c) The x-ray system shall be operated so that the useful beam at the patient's skin does not exceed the requirements of R313-28-80(2).

(d) Dental fluoroscopy without image intensification shall not be used.

R313-28-120. Mammography X-Ray Systems - Equipment Design and Performance Standards.

Only x-ray equipment meeting the following standards shall be used for mammography examinations.

(1) Equipment Design.

(a) FDA Standards. The requirements of 21 CFR 1020.30 and 21 CFR 1020.31, 1990 ed., are adopted and incorporated by reference.

(b) Dedicated Equipment. The x-ray equipment shall be specifically designed for mammography.

(c) Compression. Devices parallel to the imaging plane shall be available to immobilize and compress the breast during mammography procedures.

(d) Grids. The x-ray equipment shall have the capability for using anti-scatter grids.

(e) Automatic Exposure Control. X-ray equipment used in healing arts screening shall have automatic exposure control capabilities with a post exposure meter which indicates either milliampere-seconds or time values.

(f) Focal Spot. The focal spot size and source to image receptor distance configurations shall be limited to those appropriate for mammography.

(2) Performance Standards.

(a) State Standards. The x-ray equipment shall meet the applicable performance standards in R313-28.

(b) Filtration. The useful beam shall have a half-value layer between the values of the measured kilovolts peak divided by 100 and the measured kilovolts peak divided by 100 plus 0.1 mm of aluminum equivalent. These values are to include the contribution to filtration by the compression device.

(c) Minimum Radiation Output. X-ray equipment installed after the effective date of this rule shall meet the following standard: at 28 kilovolts peak on the focal spot used in routine healing arts screening the x-ray equipment shall be capable of sustaining a minimum output of 500 mR per second for at least three seconds. This output shall be measured at a point 4.5 centimeters from the surface of the patient support device when the source to image receptor distance is at its maximum and the compression paddle is in the beam. Existing x-ray equipment shall meet this minimum radiation output standard within one year of the effective date of this rule.

(d) Exposure Linearity. For kilovolts peak settings used clinically, the exposure per mAs shall be within plus or minus ten percent of the average exposure per mAs for those mAs stations or time stations, if applicable, that are tested.

(e) Automatic Exposure Control. The automatic exposure control mode shall produce consistent film density under changing patient and examination conditions. These conditions include breast thickness, adiposity, kilovolts peak and density settings. This requirement will be deemed satisfied when:

(i) an automatic exposure control technique guide is posted, and

(ii) for a series of films obtained for attenuator thicknesses of two to seven centimeters the resulting radiographic optical densities are within plus or minus 0.2 of the average value when the kVp and density control setting are adjusted as indicated on the technique guide. The attenuator used for determining compliance shall be either acrylic or other tissue equivalent material.

(f) Patient Dose. The x-ray equipment must be capable of giving an average glandular dose to an average size breast of average tissue density that does not exceed 3.0 mGy (0.3 rad) with a grid or 1.0 mGy (0.1 rad) without a grid. This will be deemed satisfied when using an acrylic phantom of 4.5 cm thickness. In addition, under all clinical use conditions, the average glandular dose to the breast must be less than 5.0 mGy (0.5 rad) per film for healing arts screening procedures.

(3) Mammography X-ray Equipment Quality Control.

(a) Initial Installation. Upon completion of the initial installation of the x-ray equipment, and before it is commissioned for clinical use, the equipment shall be evaluated by a mammography imaging medical physicist who has been approved by the Board. The evaluation results shall be submitted to the Executive Secretary for review and approval.

(b) Annual Evaluation. At intervals not to exceed 12 months or at the request of the Executive Secretary, the x-ray equipment shall be evaluated by a mammography imaging medical physicist who has been approved by the Board.

(c) The registrant shall develop and implement a quality control testing procedure for monitoring the radiation performance of the x-ray equipment.

R313-28-140. Qualifications of Mammography Imaging Medical Physicist.

An individual seeking certification by the Board for approval as a mammography imaging medical physicist shall file an application for certification on forms furnished by the Division. The Board may certify individuals who meet the requirements for initial qualifications. To remain certified by the Board as a mammography imaging medical physicist, an individual shall satisfy the requirements for continuing

qualifications.

(1) Initial qualifications.

(a) Be certified by the American Board of Radiology in Radiological Physics or Diagnostic Radiological Physics, or the American Board of Medical Physicists in Diagnostic Imaging Physics; or

(b) Satisfy the following educational and experience requirements:

(i) Have a master's or higher degree from an accredited university or college in physical sciences; and

(ii) Have two years full-time experience conducting mammography surveys. Five mammography surveys shall be equal to one year full-time experience.

(2) Continuing qualifications.

(a) During the three-year period after certification, the individual shall earn 15 hours of continuing educational credits in mammography imaging; and

(b) Perform at least two mammography surveys annually.

(3) Mammography imaging medical physicists who fail to maintain the required continuing qualifications stated in R313-28-140(2) shall re-establish their qualifications before independently surveying another mammography facility. To re-establish their qualifications, mammography imaging physicists who fail to meet:

(a) The continuing education requirements of R313-28-140(2)(a) must obtain a sufficient number of continuing educational credits to bring their total credits up to the required 15 in the previous three years.

(b) The continuing experience requirement of R313-28-140(2)(b) must obtain experience by surveying two mammography facilities for each year of not meeting the continuing experience requirements under the supervision of a mammography imaging medical physicist approved by the Board.

R313-28-160. Computed Tomography X-ray Equipment.

(1) Equipment Requirements.

(a) In the event of equipment failure affecting data collection, means shall be provided to terminate the x-ray exposure automatically by either de-energizing the x-ray source or intercepting the x-ray beam with a shutter mechanism through the use of either a back-up timer or devices which monitor equipment function.

(b) A visible signal shall indicate when the x-ray exposure has been terminated through the means required by R313-28-160 (1)(a).

(c) The operator shall be able to terminate the x-ray exposure at any time during a scan, or series of scans, of greater than 0.5 second duration.

(2) Tomographic Plane Indication and Alignment.

(a) Means shall be provided to permit visual determination of the location of a reference plane. This reference plane can be offset from the location of the tomographic plane.

(b) If a device using a light source is used to satisfy R313-28-160 (2)(a), the light source shall provide illumination at levels sufficient to permit visual determination of the location of the tomographic plane or reference plane.

(c) The total error in the indicated location of the tomographic plane or reference plane shall not exceed 5 millimeters.

(3) Beam-On and Shutter Status Indicators.

(a) The computed tomography (CT) x-ray control panel and CT gantry shall provide visual indication whenever x-rays are produced and, if applicable, whether the shutter is open or closed.

(b) Each emergency button or switch shall be clearly labeled as to its function.

(4) Indication of CT Conditions of Operation.

(a) The CT x-ray system shall be designed such that technique factors, tomographic section thickness, and scan increment shall be indicated prior to the initiation of a scan or series of scans.

(5) Quality Assurance Procedures. Quality assurance procedures shall be conducted on the CT x-ray equipment.

(a) The quality assurance procedures shall be in writing. Such procedures shall include, but not be limited to, the following:

(i) Specifications of the tests that are to be performed, including instructions to be employed in the performance of those tests; and

(ii) Specifications of the frequency at which tests are to be performed, the acceptable tolerance for each parameter measured and actions to be taken if tolerances are exceeded.

(b) The parameters measured to satisfy R313-28-160(5)(a)(ii) shall include, but not be limited to, kVp, mA and reproducibility of dose appropriate to the type of CT procedures performed.

(c) Records of tests performed to satisfy the requirements of R313-28-160(5)(a) and (b) shall be maintained for three years for inspection by the Division.

(6) Dose Calibration.

(a) Radiation measurements shall be performed at least annually and after change or replacement of components which could cause a change in the radiation output.

(b) The calibration of the radiation measuring instrument shall be traceable to a national standard and shall be calibrated at intervals not to exceed two years.

(c) Measurements shall be specified in terms of the multiple scan average dose, using phantoms and technique factors appropriate to the type of CT procedures performed.

R313-28-200. Information on Radiation Shielding Required for Plan Reviews.

In order for the Executive Secretary or qualified expert to provide an evaluation, technical advice and official review on shielding requirements for a radiation installation, the following information must be submitted.

(1) The plans showing, as a minimum, the following:

(a) the normal location of the radiation producing equipment's radiation port, the port's travel and traverse limits, general directions of the radiation beam, locations of windows, the location of the operator's booth, and the location of the x-ray control panel;

(b) structural composition and thickness of walls, doors, partitions, floor, and ceiling of the rooms concerned;

(c) the dimensions, including height, floor to floor, of the rooms concerned;

(d) the type of occupancy of adjacent areas inclusive of

space above and below the rooms concerned. If there is an exterior wall, show distance to the closest existing occupied areas;

(e) the make and model of the x-ray equipment, the maximum energy output, and the energy waveform; and

(f) the type of examination or treatment which will be performed with the equipment.

(2) Information on the anticipated workload of the x-ray systems in mA-minutes per week.

(3) A report showing all basic assumptions used in the development of the shielding specifications.

R313-28-300. Additional Requirements Applicable to Certified Systems Only.

Diagnostic x-ray systems incorporating one or more certified components shall be required to comply with the following additional requirements which relate to the certified component.

(1) Beam limitation for stationary and mobile general purpose x-ray systems.

(a) There shall be provided a means of stepless adjustment of the size of the x-ray field. The minimum field size at an SID of 100 centimeters shall be equal to or less than five centimeters by five centimeters.

(b) When a light localizer is used to define the x-ray field, it shall provide an average illumination of not less than 160 LUX (15 foot-candles) at 100 centimeters or at the maximum SID, whichever is less. The average illumination shall be based upon measurements made in the approximate center of the quadrants of the light field. Radiation therapy simulation systems are exempt from this requirement.

(2) Beam Limitation for Portable X-ray Systems. Beam limitation for portable x-ray systems shall meet the additional field limitation requirements of R313-28-51(1) or R313-28-300(1).

(3) Beam limitation and alignment on stationary general purpose x-ray systems equipped with PBL.

(a) PBL shall prevent the production of x-rays when:

(i) either the length or the width of the x-ray field in the plane of the image receptor differs, except as permitted by R313-28-300(3)(c), from the corresponding image receptor dimensions by more than three percent of the SID; or

(ii) the sum of the length and width differences as stated in R313-28-300(3)(a)(i) without regard to sign exceeds four percent of the SID.

(b) Compliance with R313-28-300(3)(a) shall be determined when the equipment indicates that the beam axis is perpendicular to the plane of the image receptor. Compliance shall be determined no sooner than five seconds after insertion of the image receptor.

(c) The PBL system shall be capable of operation, at the discretion of the operator, so that the field size at the image receptor can be adjusted to a size smaller than the image receptor through stepless adjustment of the field size. The minimum field size at a distance of 100 centimeters shall be equal to or less than five centimeters by five centimeters.

(d) The PBL system shall be designed so that if a change in image receptor does not cause an automatic return to PBL function as described in R313-28-300(3)(a), then change of the image receptor size or SID must cause the automatic return.

(4) Tube Stands for Portable X-Ray Systems. A tube stand or other mechanical support shall be used for portable x-ray systems, so that the x-ray tube housing assembly need not be hand-held during exposures.

R313-28-350. Qualifications of Operators.

Operators of diagnostic x-ray systems must be licensed to practice in Utah in accordance with Title 58 Chapter 54.

R313-28-400. Information to be Submitted by Persons Proposing to Conduct Healing Art Screening.

Individuals requesting that the Executive Secretary approve a healing arts screening program shall submit the following information for evaluation:

(1) name and address of the applicant and, where applicable, the names and addresses of agents within this State;

(2) diseases or conditions for which the x-ray examinations are to be used;

(3) description, in detail, of the x-ray examinations proposed in the screening program including the frequency of screening and the duration of the entire screening program;

(4) description of the population to be examined in the screening program including age, sex, physical condition, and other appropriate information; and

(5) an evaluation of known alternate methods not involving ionizing radiation which could achieve the goals of the screening program and why these methods are not used in preference to the x-ray examinations.

R313-28-450. Minimum Design Requirements for an X-ray Machine Operator's Booth - New Installations Only.

(1) Space requirements:

(a) The operator shall be allotted not less than 0.70 square meter (7.5 square feet) of unobstructed floor space in the booth.

(b) The minimum space as indicated above may be geometric configurations with no dimension of less than 0.61 meters (two feet).

(c) The space shall be allotted excluding encumbrances by the console, for example, overhang or cables, or other similar encroachments.

(d) The booth shall be located or constructed to ensure that unattenuated primary beam scatter originating on the examination table or at the wall mounted image receptor will not reach the operator's position in the booth.

(2) Structural Requirements.

(a) The booth walls shall be permanently fixed barriers of at least 2.13 meters (seven feet) high.

(b) When a door or movable panel is used as an integral part of the booth shielding, it must have a permissive device which will prevent an exposure when the door or panel is not closed.

(c) Shielding shall be provided to meet the requirements of R313-15.

(3) X-Ray Exposure Control Placement: The x-ray exposure control for the system shall be fixed within the booth and:

(a) shall be at least one meter (40 inches) from points subject to primary beam scatter, leakage or primary beam

radiation; and

(b) shall allow the operator to use the majority of the available viewing windows.

(4) Viewing system requirements:

(a) When the viewing system is a window:

(i) the viewing window shall have a visible area of at least 0.09 square meters (one square foot);

(ii) regardless of size or shape, at least 0.09 square meters (one square foot) of the window area must be centered no less than 0.6 meters (two feet) from the open edge of the booth and no less than 1.5 meters (five feet) from the floor; and

(iii) the window shall have at least the same lead equivalence of that required in the booth's wall in which it is mounted.

(b) When the viewing system is by mirrors, the mirrors shall be so located as to accomplish the general requirements of R313-28-450(4)(a).

(c) When the viewing system is by electronic means:

(i) the camera shall be so located as to accomplish the general requirements of R313-28-450(4)(a); and

(ii) there shall be an alternate viewing system as a backup for the primary system.

KEY: dental, x-ray, mammography, beam limitation
March 12, 1999 19-3-104
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R315. Environmental Quality, Solid and Hazardous Waste.
R315-301. Solid Waste Authority, Definitions, and General Requirements.
R315-301-1. Authority and Purpose.

The Solid Waste Permitting and Management Rules are promulgated under the authority of the Solid and Hazardous Waste Act, Chapter 6 of Title 19, to protect human health, to prevent land, air and water pollution, and to conserve the state's natural, economic and energy resources by setting minimum performance standards for the proper management of solid wastes originating from residences, commercial, agricultural, and other sources.

R315-301-2. Definitions.

Terms used in Rules R315-301 through R315-320 are defined in Sections 19-1-103 and 19-6-102. In addition, for the purpose of Rules R315-301 through 320, the following definitions apply.

(1) "Active area" means that portion of a facility where solid waste recycling, reuse, treatment, storage, or disposal operations are being conducted.

(2) "Airport" means a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(3) "Aquifer" means a geological formation, group of formations, or portion of a formation that contains sufficiently saturated permeable material to yield useable quantities of ground water to wells or springs.

(4) "Areas susceptible to mass movement" means those areas of influence, characterized as having an active or substantial possibility of mass movement, where the movement of earth material at, beneath, or adjacent to the landfill unit, because of natural or human-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock falls.

(5) "Asbestos Waste" means friable asbestos, which is any material containing more than 1% asbestos as determined using the method specified in Appendix A, 40 CFR Part 763.1, 1991 ed., which is adopted and incorporated by reference, that when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

(6) "Background concentration" means the concentration of a contaminant in ground water upgradient or a lateral hydraulically equivalent point from a facility, practice, or activity, and which has not been affected by that facility, practice, or activity.

(7) "Class I landfill" means a municipal landfill or a commercial landfill solely under contract with a local government taking municipal waste generated within the boundaries of the local government and receiving, on a yearly average, over 20 tons of solid waste per day.

(8) "Class II landfill" means a municipal landfill or a commercial landfill solely under contract with a local government taking municipal waste generated within the boundaries of the local government and receiving, on a yearly average, 20 tons, or less, of solid waste per day.

(9) "Class III landfill" means a non-commercial landfill that is to receive only industrial solid waste, but excluding farms and ranches.

(10) "Class IV landfill" means a landfill that is to receive only construction/demolition waste, yard waste, inert waste, dead animals, or upon meeting the requirements of Section 26-32a-103.5 and Section R315-320-3, waste tires and materials derived from waste tires.

(11) "Class V landfill" means a commercial landfill which receives any nonhazardous solid waste for disposal. Class V landfill does not include a landfill that is solely under contract with a local government within the state to dispose of nonhazardous solid waste generated within the boundaries of the local government.

(12) "Closed facility" means any facility that no longer receives solid waste and has completed an approved closure plan, and any landfill on which an approved final cover has been installed.

(13) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding household waste and industrial wastes.

(14) "Composite liner" means a liner system consisting of two components: the upper component consisting of a synthetic flexible membrane liner, and the lower component consisting of a layer of compacted soil. The composite liner must have the synthetic flexible membrane liner installed in direct and uniform contact with the compacted soil component and be constructed of specified materials and compaction to meet specified permeabilities.

(15) "Composting" means a method of solid waste management whereby the organic component of the waste stream is biologically decomposed under controlled conditions to a state in which the end product or compost can be safely handled, stored, or applied to the land without adversely affecting human health or the environment.

(16) "Construction/demolition waste" means waste from building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures. Such waste may include: bricks, concrete, other masonry materials, soil, asphalt, rock, untreated lumber, rebar, and tree stumps. It does not include asbestos, contaminated soils or tanks resulting from remediation or clean-up at any release or spill, waste paints, solvents, sealers, adhesives, or similar hazardous or potentially hazardous materials.

(17) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water or soil which is a result of human activity.

(18) "Displaced or displacement" means the relative movement of any two sides of a fault measured in any direction.

(19) "Drop box facility" means a facility used for the placement of a large detachable container or drop box for the collection of solid waste for transport to a solid waste disposal facility. The facility includes the area adjacent to the containers for necessary entrance, exit, unloading, and turn-around areas. Drop box facilities normally serve the general public with uncompacted loads and receive waste from off-site. Drop box facilities do not include residential or commercial waste containers on the site of waste generation.

(20) "Energy recovery" means the recovery of energy in a useable form from incineration, burning, or any other means of using the heat of combustion of solid waste that involves high temperature (above 1200 degrees Fahrenheit) processing.

(21) "Existing facility" means any facility that was receiving solid waste on or before July 15, 1993.

(22) "Expansion of a solid waste disposal facility" means any lateral or vertical expansion beyond or above the boundaries outlined in the initial permit application. Where no boundaries were designated in the disposal facility permit, expansion shall apply to all new land purchased or acquired after the effective date of these rules.

(23) "Facility" means all contiguous land, structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal operational units, e.g., one or more incinerators, landfills, container storage areas, or combinations of them.

(24) "Floodplain" means the land which has been or may be hereafter covered by flood water which has a 1% chance of occurring any given year. The flood is also referred to as the base flood or 100-year flood.

(25) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure or as determined by EPA test method 9095 (Paint Filter Liquids Test) as provided in EPA Report SW-846 "Test Methods for Evaluating Solid Waste" third edition, November 1986, as revised December 1987 which is adopted and incorporated by reference.

(26) "Garbage" means discarded animal and vegetable wastes and animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food, and of such a character and proportion as to be capable of attracting or providing food for vectors. Garbage does not include sewage and sewage sludge.

(27) "Ground water" means subsurface water which is in the zone of saturation including perched ground water.

(28) "Ground water quality standard" means a standard for maximum allowable contamination in ground water as set by Section R315-308-4.

(29) "Hazardous waste" means hazardous waste as defined by Subsection 19-6-102(9) and Section R315-2-3.

(30) "Holocene fault" means a fracture or zone of fractures along which rocks on one side of the fracture have been displaced with respect to those on the other side, which has occurred in the most recent epoch of the Quaternary period extending from the end of the Pleistocene, approximately 11,000 years ago, to the present.

(31) "Household size" means a container for a material or product that is normally and reasonably associated with households or household activities. The containers are of a size and design to hold materials or products generally for immediate use and not for storage, five gallons or less in size.

(32) "Household waste" means any solid waste, including garbage, trash, and sanitary waste in septic tanks, derived from households including single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

(33) "Incineration" means a controlled thermal process by which solid wastes are physically or chemically altered to gas, liquid, or solid residues which are also regulated solid wastes. Incineration does not include smelting operations where metals are reprocessed or the refining, processing, or the burning of used oil for energy recovery as described in Rule R315-15.

(34) "Industrial solid waste" means any solid waste generated at a manufacturing or other industrial facility that is not a hazardous waste. Industrial solid waste includes waste resulting from the following manufacturing processes and associated activities: electric power generation; fertilizer or agricultural chemicals; food and related products or by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing or foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste; oil and gas waste; or other waste excluded by Subsection 19-6-102(17)(b).

(35) "Industrial solid waste facility" means a facility which receives only industrial solid waste from on-site or off-site sources for disposal.

(36) "Inert waste" means noncombustible, nonhazardous solid wastes that retain physical and chemical structure under expected conditions of disposal, including resistance to biological or chemical attack.

(37) "Landfill" means a disposal facility where solid waste is placed in or on the land and which is not a landtreatment facility or surface impoundment.

(38) "Landtreatment, landfarming, or landspreading facility" means a facility or part of a facility where solid waste is applied onto or incorporated into the soil surface for the purpose of biodegradation.

(39) "Lateral expansion of a solid waste disposal facility" means any horizontal expansion of the waste boundaries of an existing landfill cell, module, or unit or expansions not consistent with past normal operating practices.

(40) "Lateral hydraulically equivalent point" means a point located hydraulically equal to a facility and in the same ground water with similar geochemistry such that the ground water, at that point, has not been affected by the facility.

(41) "Leachate" means a liquid that has passed through or emerged from solid waste and may contain soluble, suspended, miscible, or immiscible materials removed from such waste.

(42) "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include human-made materials, such as fill, concrete and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

(43) "Lower explosive limit" means the lowest percentage by volume of a mixture of explosive gases which will propagate a flame in air at 25 degrees Celsius (77 degrees Fahrenheit) and atmospheric pressure.

(44) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizonal acceleration depicted on a seismic hazard map, with a 90% or greater

probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on site specific seismic risk assessment.

(45) "Municipal landfill" means a landfill that is not for profit and is either owned and operated by a local government or a government entity such as a city, town, county, service district, or an entity created by interlocal agreement of local governments, or is solely under contract with a local government or government entity. The landfill accepts, for disposal, the nonhazardous solid waste, including municipal solid waste, generated within the jurisdictional boundaries of the local government or government entity.

(46) "Municipal solid waste" means household waste, commercial solid waste, non-hazardous sludge, and exempt small quantity generator waste.

(47) "New facility" means any facility that begins receiving solid waste after July 15, 1993.

(48) "Off-site" means any site which is not on-site.

(49) "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along the right-of-way. Property separated by a private right-of-way, which the site owner or operator controls, and to which the public does not have access, is also considered on-site property.

(50) "Operator" means the person, as defined by Subsection 19-1-103(4), responsible for the overall operation of a facility.

(51) "Owner" means the person, as defined by Subsection 19-1-103(4), who owns a facility or part of a facility.

(52) "PCB and PCBs" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of materials which contain such substances.

(53) "Permeability" means the ease with which a porous material allows water and the solutes contained therein to flow through it. This is usually expressed in units of centimeters per second (cm/sec) and termed hydraulic conductivity. Soils and synthetic liners with a permeability for water of 1×10^{-7} cm/sec or less may be considered impermeable.

(54) "Permit" means the plan approval as required by Subsection 19-6-108(3)(a), or equivalent control document issued by the Executive Secretary to implement the requirements of the Utah Solid and Hazardous Waste Act.

(55) "Pile" means any noncontainerized accumulation of solid waste that is used for treatment or storage.

(56) "Poor foundation conditions" means those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of a landfill unit.

(57) "Putrescible" means organic material subject to decomposition by microorganisms.

(58) "Qualified ground water scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certification, or completion of accredited university programs that enable that individual to make sound professional judgements regarding ground water monitoring, contaminant fate and transport, and corrective action.

(59) "Recycling" means extracting valuable materials from the waste stream and transforming or remanufacturing them into useable materials that have a demonstrated or potential market.

(a) Recycling does not include processes that generate such volumes of material that no market exists for the material.

(b) Any part of the waste stream entering a recycling facility and subsequently returned to a waste stream or disposed has the same regulatory designation as the original waste.

(c) Recycling includes the substitution of nonhazardous solid waste fuels for conventional fuels (such as coal, natural gas, and petroleum products) for the purpose of generating the heat necessary to manufacture a product.

(60) "Recyclable materials" means those solid wastes that can be recovered from or otherwise diverted from the waste stream for the purpose of recycling, such as metals, paper, glass, and plastics.

(61) "Run-off" means any rainwater, leachate, or other liquid that has contacted solid waste and drains over land from any part of a facility.

(62) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto the active area of a facility.

(63) "Scavenging" means the uncontrolled removal of solid waste from a facility.

(64) "Seismic impact zone" means an area with a 10% or greater probability that the maximum horizonal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in 250 years.

(65) "Septage" means a semisolid consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from septic tank systems.

(66) "Sharps" means any discarded or contaminated article or instrument from a health facility that may cause puncture or cuts. Such waste may include needles, syringes, blades, needles with attached tubing, pipettes, pasteurs, broken glass, and blood vials.

(67) "Sludge" means any solid, semisolid, or liquid waste, including grit and screenings generated from a:

(a) municipal, commercial, or industrial waste water treatment plant;

(b) water supply treatment plant;

(c) car wash facility;

(d) air pollution control facility; or

(e) any other such waste having similar characteristics.

(68) "Solid waste disposal facility" means a facility or part of a facility at which solid waste is received from on-site or off-site sources and intentionally placed into or on land and at which waste, if allowed by permit, may remain after closure. Solid waste disposal facilities include landfills, incinerators, and land treatment areas.

(69) "Solid waste incinerator facility" means a facility at which solid waste is received from on-site or off-site sources and is subjected to the incineration process. An incinerator facility that incinerates solid waste for any reason, including energy recovery, volume reduction, or to render it non-infectious, is a solid waste incinerator facility and is subject to Rules R315-301 through 320.

(70) "Special waste" means discarded materials which may require special handling or may pose a threat to public safety, human health, or the environment. Special waste may include ash, automobile bodies, furniture and appliances, infectious waste, tires, dead animals, asbestos, industrial waste, wastes exempt from the hazardous waste classifications under the Federal Resource Conservation and Recovery Act, U.S.C., Section 6901, et seq., PCBs, and sludge.

(71) "State" means the State of Utah.

(72) "Structural components" means liners, leachate collection systems, final covers, run-on or run-off systems, and any other component used in the construction and operation of a landfill that is necessary for the protection of human health and the environment.

(73) "Surface impoundment or impoundment" means a facility or part of a facility which is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials, although it may be lined with synthetic materials, which is designed to hold an accumulation of liquid waste or waste containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(74) "Transfer station" means a permanent, fixed, supplemental collection and transportation facility used by persons and route collection vehicles to deposit collected solid waste from off-site into a larger transfer vehicle for transport to a solid waste handling or disposal facility.

(75) "Transport vehicle" means a vehicle capable of hauling large amounts of solid waste such as a truck, packer, or trailer that may be used by refuse haulers to transport solid waste from the point of generation to a transfer station or a disposal facility.

(76) "Twenty-five year storm" means a 24-hour storm of such intensity that it has a 4% probability of being equalled or exceeded any given year. The storm could result in what is referred to as a 25-year flood.

(77) "Unit boundary" means a vertical surface located at the hydraulically downgradient limit of a landfill unit or other solid waste disposal facility unit which is required to monitor ground water. This vertical surface extends down into the ground water.

(78) "Unstable area" means a location that is susceptible to natural or human induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a facility. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

(79) "Vadose zone" means the zone of aeration including soil and capillary water. The zone is bound above by the land surface and below by the water table.

(80) "Vector" means a living animal including insect or other arthropod which is capable of transmitting an infectious disease from one organism to another.

(81) "Washout" means the carrying away of solid waste by waters of a base or 100-year flood.

(82) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(83) "Yard waste" means vegetative matter resulting from landscaping, land maintenance, and land clearing operations including grass clippings, prunings, and other discarded material generated from yards, gardens, parks, and similar types of facilities. Yard waste does not include garbage, paper, plastic, sludge, septage, or manure.

R315-301-3. Owner Responsibilities for Solid Waste.

The owner, operator or occupant of any premises or business establishment shall be responsible for the management and disposal of all solid waste generated or accumulated by the owner, operator, or occupant of the property in compliance with the Utah Solid Waste Permitting and Management Rules and the Utah Solid and Hazardous Waste Act.

R315-301-4. Prohibition of Illegal Disposal or Incineration of Solid Waste.

(1) No person shall incinerate, burn, or otherwise dispose of any solid waste in any place except at a facility which is in compliance with the requirements of Rules R315-301 through 320 and other applicable rules. This requirement does not include the deposition of inert waste used as fill material, mine tailings and overburden, agricultural waste, or the recycling of asphalt as specified in Subsection R315-301-4(2) if the deposition or disposal does not cause a public nuisance or hazard or contribute to land, air, or water pollution.

(2) Recycling of asphalt occurs when it is used:

(a) as a feedstock in the manufacture of new hot or cold mix asphalt;

(b) as underlayment in road construction;

(c) as subgrade in road construction when the asphalt is above the historical high level of ground water;

(d) under parking lots when the asphalt is above the historical high level of ground water; or

(e) as road shoulder when the use meets engineering requirements.

R315-301-5. Permit Required.

(1) No solid waste disposal facility shall be maintained, established, or expanded until the owner or operator of such facility has obtained a permit from the Executive Secretary.

(2) The owner or operator of a solid waste disposal facility shall operate the facility in accordance with the conditions of the permit and otherwise follow the permit.

(3) In areas where no public or duly licensed disposal service is available, the on-site disposal of on-site generated nonhazardous solid waste from a single family farm or a single family ranch does not require a permit.

R315-301-6. Protection of Human Health and the Environment.

(1) The management of solid waste shall not present a threat to human health or the environment.

(2) Any contamination of the ground water, surface water, air, or soil that results from the management of solid waste which presents a threat to human health or the environment shall be remediated through appropriate corrective action.

KEY: solid waste management, waste disposal

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Notice of Continuation April 2, 1998	**19-6-108**
	19-6-109
	40 CFR 258

R315. Environmental Quality, Solid and Hazardous Waste.
R315-305. Class IV Landfill Requirements.
R315-305-1. Applicability.

(1) These standards apply to each facility that landfills only:

(a) inert waste, construction/demolition waste, yard waste, dead animals; or

(b) upon meeting the requirements of Section 26-32a-103.5 and Subsections R315-320-3(1) or (2), waste tires and material derived from waste tires.

(2) Inert wastes and inert demolition waste used as road building materials and fill material are excluded from Rule R315-305.

(3) The location, design, and operation standards of Rule R315-305 become effective January 1, 1998 on each Class IV Landfill.

(4) The ground water monitoring standards of Rule R315-305 become effective July 1, 1998 on each Class IV Landfill that is required to monitor the ground water.

R315-305-2. Class IV Landfill Standards for Performance.

Each Class IV Landfill shall meet the landfill standards for performance as specified in Section R315-303-2.

R315-305-3. Definitions.

Terms used in Rule R315-305 are defined in Section R315-301-2. In addition, for the purpose of Rule R315-305, the following definitions apply.

(1) "Class IVa Landfill" means a Class IV Landfill that receives, based on an annual average, over 20 tons of waste per day and may receive, as a component of construction/demolition waste, conditionally exempt small quantity generator hazardous waste as defined by Section R315-2-5.

(2) "Class IVb Landfill" means a Class IV Landfill that receives, based on an annual average, 20 tons, or less, of waste per day or demonstrates that no conditionally exempt small quantity generator hazardous waste is accepted.

(3) "Existing Class IV Landfill" means a Class IV Landfill that was receiving waste on or before January 1, 1998.

(4) "New Class IV Landfill" means a Class IV Landfill that begins receiving waste after January 1, 1998.

R315-305-4. General Requirements.

(1) Location Standards.

(a) A new Class IV Landfill or a lateral expansion of an existing Class IV Landfill shall be subject to the following location standards:

(i) the standards with respect to floodplains as specified in Subsection R315-302-1(2)(c)(ii);

(ii) the standards with respect to wetlands as specified in Subsection R315-302-1(2)(d); and

(iii) the landfill shall be located so that the lowest level of waste is at least five feet above the historical high level of ground water.

(b) An existing Class IV Landfill shall not be subject to the location standards of Subsection R315-305-4(1)(a).

(2) An owner or operator of a Class IV Landfill shall obtain a permit, as set forth in Rule R315-310.

(3) An owner or operator of a Class IV Landfill shall design and operate the landfill to:

(a) prevent the run-on of all surface waters resulting from a maximum flow of a 25-year storm into the active area of the landfill; and

(b) collect and treat, if necessary, the run-off of surface waters and other liquids resulting from a 25-year storm from the active area of the landfill.

(4) An owner or operator of a Class IVa Landfill shall monitor the ground water beneath the landfill as specified in Rule R315-308.

(5) An owner or operator of a Class IV Landfill shall erect a sign at the facility entrance as specified in Subsection R315-303-3(6)(d).

(6) An owner or operator of a Class IV Landfill shall maintain the applicable records as specified in Subsection R315-302-2(3).

(7) An owner or operator of a Class IV Landfill shall meet the requirements of Subsection R315-302-2(6) and make the required recording with the county recorder.

R315-305-5. Requirements for Operation.

(1) The owner or operator of a Class IV Landfill shall not accept any other form of waste except construction/demolition waste, yard waste, inert waste, dead animals, or upon meeting the requirements of Section 26-32a-103.5 and Subsections R315-320-3(1) or (2), waste tires and material derived from waste tires.

(2) The owner or operator of a Class IV Landfill shall prevent the disposal of unauthorized waste by ensuring that at least one person is on site during hours of operation and shall prevent unauthorized disposal during off-hours by controlling entry, i.e., lockable gate or barrier, when the facility is not open.

(3) The owner or operator of a Class IV Landfill shall:

(a) minimize the size of the working face as required by Subsection R315-303-3(6)(g); and

(b) employ measures to prevent emission of fugitive dusts, when weather conditions or climate indicate that transport of dust off-site is liable to create a nuisance.

(4) The owner or operator of a Class IV Landfill shall cover timbers, wood, and other combustible waste with a minimum of six inches of soil, or equivalent, as needed to avoid a fire hazard.

(5) The owner or operator of a Class IV Landfill shall meet the applicable general requirements of closure and post-closure care of Section R315-302-3 as determined by the Executive Secretary.

(a) The owner or operator of a Class IVa Landfill shall meet the specific closure requirements of Subsection R315-303-3(4).

(b) The owner or operator of a Class IVb Landfill shall close the facility by:

(i) leveling the waste to the extent practicable;

(ii) covering the waste with a minimum of two feet of soil, including six inches of topsoil;

(iii) contouring the cover as specified in Subsection R315-303-3(4)(a)(iii); and

(iv) seeding the cover with grass, other shallow rooted vegetation, or other native vegetation or covering in another manner approved by the Executive Secretary to minimize

erosion.

KEY: solid waste management, waste disposal

March 15, 1999	**19-6-104**
Notice of Continuation April 2, 1998	**19-6-105**
	19-6-108
	19-6-109
	40 CFR 257

R315. Environmental Quality, Solid and Hazardous Waste.
R315-315. Special Waste Requirements.
R315-315-1. General Requirements.

(1) If special wastes are accepted at the facility, proper provisions shall be made for handling and disposal. These provisions shall include, where required and approved by the Executive Secretary, a separate area for disposal of the wastes, designated by appropriate signs.

(2) The following wastes are prohibited from disposal at a solid waste disposal facility.

(a) Lead acid batteries must be recycled and otherwise managed in accordance with Sections 19-6-601 through 607.

(b) Used oil must be recycled and otherwise managed in accordance with Rule R315-15.

R315-315-2. Asbestos Waste.

(1) Asbestos waste shall be handled, transported, and disposed in a manner that will not permit the release of asbestos fibers into the air and must otherwise comply with Sections R307-1-4.12 and R307-1-8 and 40 CFR Part 61, Subpart M, 1995 ed.

(2) No transporter or disposal facility shall accept friable asbestos waste unless the waste has been adequately wetted and containerized.

(a) Asbestos waste is adequately wetted when its moisture content prevents fiber release.

(b) Asbestos waste is properly containerized when it is placed in double plastic bags of 6-mil or thicker, sealed in such a way to be leak-proof and air-tight, and the amount of void space or air in the bags is minimized. Asbestos waste slurries must be packaged in leak-proof and air-tight rigid containers if such slurries are too heavy for the plastic bag containers. The Executive Secretary may authorize other proper methods of containment which may include double bagging, plastic-lined cardboard containers, plastic-lined metal containers, or the use of vacuum trucks for the transport of slurry.

(c) All asbestos containers shall be labeled with the name of the waste generator, the location where the waste was generated, and tagged with a warning label indicating that the containers hold asbestos.

(3) Disposal of Asbestos Waste.

(a) Upon entering the disposal site, the transporter of the asbestos waste shall notify the landfill operator that the load contains asbestos by presenting the waste shipment record. The landfill operator will verify quantities received, sign off on the waste shipment record, and send a copy of the waste shipment record to the generator within 30 days.

(b) Upon the receipt of the asbestos waste, the landfill operator shall require that the vehicles that have transported asbestos waste be marked with warning signs as specified in 40 CFR Part 61.149(d)(1)(iii), 1995 ed., which is adopted and incorporated by reference. The operator shall also inspect the loads to verify that the asbestos waste is properly contained in leak-proof containers and labeled appropriately. The operator shall notify the local health department and the Executive Secretary if the operator believes that the asbestos waste is in a condition that may cause significant fiber release during disposal. If the wastes are not properly containerized, and the landfill operator accepts the load, the operator shall thoroughly soak the asbestos with a water spray prior to unloading, rinse out the truck, and immediately cover the wastes with non-waste material which prevents fiber release prior to compacting the waste in the landfill.

(c) During waste deposition and covering, the operator:

(i) may prepare a separate trench or separate area of the landfill to receive only asbestos waste, or may dispose of asbestos at the working face of the landfill;

(ii) shall place asbestos containers into the trench, separate area, or at the bottom of the landfill working face with sufficient care to avoid breaking the containers;

(iii) within 18 hours, shall completely cover the containerized waste with sufficient care to avoid breaking the containers with a minimum of six inches of material containing no asbestos. If the waste is improperly containerized, it must be completely covered immediately with six inches of material containing no asbestos; and

(iv) shall not compact asbestos containing material until completely covered with a minimum of six inches of material containing no asbestos.

(d) The operator shall provide barriers adequate to control public access. At a minimum, the operator shall:

(i) limit access to the asbestos management site to no more than two entrances by gates that can be locked when left unattended and by fencing adequate to restrict access by the general public; and

(ii) place warning signs at the entrances and at intervals no greater than 200 feet along the perimeter of the sections where asbestos waste is deposited that comply with the requirements of 40 CFR Part 61.154(b), 1995 ed., which is adopted and incorporated by reference; and

(e) close the separate trenches, if constructed, according to the requirements of Subsection R315-303-3(4) with the required signs in place.

R315-315-3. Ash.

(1) Ash Management.

(a) Ash may be recycled.

(b) If ash is disposed, the preferred method is in a permitted Class III ash monofill, but ash may be disposed in a permitted Class I, II, III, or V landfill.

(2) Ash shall be transported in a manner to prevent leakage or the release of fugitive dust.

(3) Ash shall be handled and disposed at the landfill in a manner to prevent fugitive dust emissions.

R315-315-4. Bulky Waste.

Bulky waste such as automobile bodies, furniture, and appliances shall be crushed and then pushed onto the working face near the bottom of the cell or into a separate disposal area.

R315-315-5. Sludge Requirements.

(1) No water treatment plant sludge, digested waste water treatment plant sludge, or septage containing free liquids may be disposed in any landfill with other solid waste.

(2) Water treatment plant sludge, digested waste water treatment plant sludge, or septage containing no free liquids may be placed at or near the bottom of the landfill working face and covered with other solid waste or other suitable cover

material.

(3) Disposal of sludge in a landfill must meet the requirements of Subsection R315-303-3(1).

R315-315-6. Dead Animals.

Dead animals received at the facility shall be deposited onto the working face at or near the bottom of the cell with other solid waste, or into a separate disposal trench provided they are covered daily with a minimum of six inches of earth to minimize odors and the propagation and harborage of rodents or insects.

R315-315-7. PCB Containing Waste.

(1) Any facility that disposes of nonhazardous waste containing PCBs is regulated by Rules R315-301 through 320.

(2) The following waste containing PCBs may be disposed in a permitted Class I, II, III, IV, or V Landfill or in a permitted incinerator or energy recovery facility:

(a) waste containing PCBs at concentrations less than 50 ppm;

(b) PCB household waste as defined by 40 CFR 761.3 (1997), as amended by 63 FR 35436-35474; and

(c) small quantities of intact, non-leaking small PCB capacitors from fluorescent lights.

(3) Waste containing PCBs at concentrations of 50 ppm, or higher, are prohibited from disposal in a landfill, incinerator, or energy recovery facility that is regulated by Rules R315-301 through 320 except:

(a) the following facilities may receive waste containing PCBs at concentrations of 50 ppm or higher:

(i) an existing facility, as defined by Subsection R315-301-2(21), that is permitted under 40 CFR 761.70 or .75 (1997), as amended by 63 FR 35436-35474 to accept waste containing PCBs; or

(ii) a new facility, as defined by Subsection R315-301-2(47), that is permitted under 40 CFR 761.70, .71, .72, or .75 (1997), as amended by 63 FR 35436-35474 to accept waste containing PCBs, which facility must also receive approval under Rules R315-301 through 320; and

(b) when approved by the Executive Secretary, the following wastes may be disposed at a permitted landfill or at an incinerator that meets the requirements of Subsection R315-315-7(3)(a):

(i) PCB bulk products regulated by 40 CFR 761.62(b) (1997), as amended by 63 FR 35436-35474;

(ii) drained PCB contaminated equipment as defined by 40 CFR 761.3, (1997), as amended by 63 FR 35436-35474;

(iii) drained PCB articles as defined by 40 CFR 761.3 (1997), as amended by 63 FR 35436-35474;

(iv) non-liquid cleaning materials remediation wastes containing PCB's regulated by 40 CFR 761.61(a)(5)(v)(A) (1997), as amended by 63 FR 35436-35474;

(v) PCB containing manufactured products regulated by 40 CFR 761.62(b)(1)(i) and (ii) (1997), as amended by 63 FR 35436-35474; or

(vi) non-liquid PCB containing waste, initially generated as a non-liquid waste, generated as a result of research and development regulated by 40 CFR 761.64(b)(2) (1997), as amended by 63 FR 35436-35474.

KEY: solid waste management, waste disposal
March 15, 1999 19-6-105
Notice of Continuation April 28, 1998

R315-317-2. Variances.

(1) Variances will be granted by the Board only to the extent allowed under Federal law.

(2) Any owner or operator of a solid waste facility may apply to the Board for a variance from any portion of Rules R315-301 through 320 except as specified in Subsection R315-317-2(1). The application shall be accompanied by such information as the Executive Secretary may require. All applications for a variance shall be subject to the public comment requirements of Subsection R315-311-3. The Board may grant such variance, if it finds that:

(a) the solid waste handling practices or location do not endanger public health, safety, or the environment; and

(b) the application of, or compliance with, any requirement of Rules R315-301 through 320 would cause undue or unreasonable hardship to any person; and

(c) circumstances of the solid waste disposal site location, operating procedures, or other conditions indicate that the purpose and intent of Rules R315-301 through 320 as well as other state and federal regulations can be achieved without strict adherence to all of the requirements.

(3) If a variance is granted by the Board under Section R315-317-2 for a period longer than one year, the variance shall contain a timetable for coming into compliance and shall be conditioned on adherence to that timetable.

R315-317-3. Violations, Orders, and Hearings.

(1) Whenever the Executive Secretary or his duly appointed representative determines that any person is in violation of any applicable approved solid waste operation plan or permit or the requirements of Rules R315-301 through 320, the Executive Secretary may cause written notice of violation to be served upon the alleged violators. The notice shall specify the provisions of the plan, permit, or rules alleged to have been violated and the facts alleged to constitute the violation. The Executive Secretary may issue an order that necessary corrective action be taken within a reasonable time or may request the attorney general or the county attorney in the county in which the violation takes place to bring a civil action for injunctive relief and enforcement of the permit requirements or the requirements of Rules R315-301 through 320.

(2) Any order issued pursuant to Subsection R315-317-3(1) shall become final unless, within 30 days after the order is served, the persons specified therein request, in writing, a hearing. Title 63, Chapter 46b and Rule R315-12 shall govern the conduct of hearings before the Board.

KEY: solid waste management, waste disposal
March 15, 1999 **19-6-105**

R315. Environmental Quality, Solid and Hazardous Waste.
R315-320. Waste Tire Transporter and Recycler Requirements.
R315-320-1. Authority and Purpose.

(1) The waste tire transporter and recycler requirements are promulgated under the authority of the Waste Tire Recycling Act, Title 26, Chapter 32a, and the Solid and Hazardous Waste Act Title 19, Chapter 6, to protect human health; to prevent land, air and water pollution; to conserve the state's natural, economic, and energy resources; and to promote recycling of waste tires.

(2) This rule does not supersede or affect any ordinance or regulation adopted by the governing body of a political subdivision or local health department if the ordinance or regulation is at least as stringent as this rule, nor does this rule relieve a tire transporter or recycler from the requirement to meet all applicable local ordinances or regulations.

R315-320-2. Definitions.

Terms used in Rule R315-320 are defined in Sections R315-301-2 and 26-32a-103. In addition, for the purpose of this rule, the following definitions apply:

(1) "Crumb rubber" means waste tires that have been ground, shredded or otherwise reduced in size such that the material can pass through a ASTM standard 10 mesh screen.

(2) "Shredded Tires" means waste tires that have been reduced in size so that the greatest dimension of a minimum of 60 percent, by weight, of the pieces are no more than six inches and the greatest dimension of any piece is no more than 12 inches.

(3) "Ultimate product" means:

(a) a product that has, as a component, waste tires or materials derived from waste tires and may have the following characteristics:

(i) has a demonstrated market;

(ii) is the last manufacturing step in a processing sequence; or

(iii) meets all of the specifications for a material that is being replaced in a processing sequence.

(b) Ultimate product includes pyrolized tires and crumb rubber.

(c) Ultimate product does not include a product which, upon disposal or disassembly of the product, whole tires remain.

(4) "Vehicle identification number" means the identifying number assigned by the manufacture or by the Utah Motor Vehicle Division of the Utah Tax Commission for the purpose of identifying the vehicle.

(5) "Waste tire recycling or recycling" means the burning of waste tires or material derived from waste tires as a fuel for energy recovery or the creation of ultimate products from waste tires or material derived from waste tires.

R315-320-3. Landfilling of Waste Tires and Material Derived from Waste Tires.

(1) Landfilling of Whole Tires. Except for tires from devices moved exclusively by human power and tires with a rim diameter greater than 24.5 inches, an individual, including a waste tire transporter, may not dispose of more than four whole tires at one time in a landfill.

(2) Landfilling of Material Derived from Waste Tires. An individual, including a waste tire transporter, may dispose of material derived from waste tires in a landfill which has a permit issued by the Executive Secretary.

(3) Reimbursement for Landfilling Shredded Tires.

(a) The owner or operator of a permitted landfill may apply for reimbursement for landfilling shredded tires as specified in Subsection R315-320-6(1).

(b) To receive the reimbursement, the owner or operator of the landfill must meet the following conditions:

(i) the waste tires shall be shredded;

(ii) the shredded tires shall be stored in a segregated cell or other landfill facility that ensures the shredded tires are in a clean and accessible condition so that they may be reasonably retrieved and recycled at a future time; and

(iii) the design and operation of the landfill cell or other landfill facility has been reviewed and approved by the Executive Secretary prior to the acceptance of shredded tires.

(4) Violation of Sections R315-320-3(1) or (2) is subject to enforcement proceedings and a civil penalty as specified in Subsection 26-32a-103.5(4).

R315-320-4. Waste Tire Transporter Registration Requirements.

(1) Each waste tire transporter who transports waste tires within the state of Utah must apply for, receive and maintain a current waste tire transporter registration certificate from the Executive Secretary.

(2) Each applicant for registration as a waste tire transporter shall complete a waste tire transporter application form provided by the Executive Secretary and provide the following information:

(a) business name;

(b) address to include:

(i) mailing address; and

(ii) site address if different from mailing address;

(c) telephone number;

(d) list of vehicles used including the following:

(i) description of vehicle;

(ii) license number of vehicle;

(iii) vehicle identification number; and

(iv) name of registered owner;

(e) name of business owner;

(f) name of business operator;

(g) list of sites to which waste tires are to be transported;

(h) liability insurance information as follows:

(i) name of company issuing policy;

(ii) amount of liability insurance coverage; and

(iii) term of policy.

(3) A waste tire transporter shall demonstrate financial responsibility for bodily injury and property damage, including bodily injury and property damage to third parties caused by sudden or nonsudden accidental occurrences arising form transporting waste tires. The waste tire transporter shall have and maintain liability coverage for sudden or nonsudden accidental occurrences. The Executive Secretary may not require the liability coverage to exceed $300,000.

(4) A waste tire transporter shall notify the Executive Secretary of:

(a) any change in liability insurance coverage within 5 working days of the change; and

(b) any other change in the information provided in Subsection R315-320-4(2) within 20 days of the change.

(5) A registration certificate will be issued to an applicant following the:

(a) completion of the application required by Subsection R315-320-4(2);

(b) presentation of proof of liability coverage as required by Subsection R315-320-4(3); and

(c) payment of the fee as required by the Annual Appropriations Act.

(6) A waste tire transporter registration certificate is not transferable and shall be issued for the term of one year.

(7) If a waste tire transporter has a valid registration from any county in Utah having a waste tire transporter registration program:

(a) the Executive Secretary shall issue a non-transferable registration certificate upon the applicant meeting the requirements of Subsections R315-320-4(2) and (3) and shall not require the payment of the fee specified in the Annual Appropriations Act; and

(b) the registration certificate shall be valid for one year.

(8) Waste tire transporters storing tires in piles must meet the requirements of Rule R315-314.

R315-320-5. Waste Tire Recycler Registration.

(1) Each waste tire recycler operating within the state and each waste tire recycler operating outside the state, but requesting reimbursement allowed by Subsection 26-32a-107(1) and Section R315-320-6, must apply for, receive and maintain a current waste tire recycler registration certificate from the Executive Secretary.

(2) Each applicant for registration as a waste tire recycler shall complete a waste tire recycler application form provided by the Executive Secretary and provide the following information:

(a) business name;

(b) address to include:

(i) mailing address; and

(ii) site address if different from mailing address;

(c) telephone number;

(d) owner name;

(e) operator name;

(f) description of the recycling process;

(g) estimated number of tires to be recycled each year; and

(h) liability insurance information as follows:

(i) name of company issuing policy;

(ii) proof of the amount of liability insurance coverage; and

(iii) term of policy.

(3) A waste tire recycler shall demonstrate financial responsibility for bodily injury and property damage, including bodily injury and property damage to third parties caused by sudden or nonsudden accidental occurrences arising from storing and recycling waste tires. The waste tire recycler shall have and maintain liability coverage for sudden or nonsudden accidental occurrences. The Executive Secretary may not require the liability coverage to exceed $300,000.

(4) A waste tire recycler shall notify the Executive Secretary of:

(a) any change in liability insurance coverage within 5 working days of the change; and

(b) any other change in the information provided in Subsection R315-320-5(2) within 20 days of the change.

(5) A registration certificate will be issued to an applicant following the:

(a) completion of the application required by Subsection R315-320-5(2);

(b) presentation of proof of liability coverage as required by Subsection R315-320-5(3); and

(c) payment of the fee as required by the Annual Appropriations Act.

(6) A waste tire recycler registration certificate is not transferable and shall be issued for a term of one year.

(7) If a waste tire recycler has a valid registration from any county in Utah having a waste tire recycler registration program:

(a) the Executive Secretary shall issue a non-transferable registration certificate upon the applicant meeting the requirements of Subsections R315-320-5(2) and (3) and shall not require the payment of the fee specified in the Annual Appropriations Act; and

(b) the registration certificate shall be valid for one year.

(8) Waste tire recyclers must meet the requirements of Rule R315-312 for recycling facilities and the requirements of Rule R315-314 for waste tires stored in piles.

R315-320-6. Reimbursement for Recycling Waste Tires.

(1) As provided in Subsection 26-32a-107(1)(a), any waste tire recycler within the state may submit an application for partial reimbursement of the cost of transporting and processing the recycled waste tires to the local health department having jurisdiction over the applicant's business address.

(a) The applicant shall meet all requirements established by the local health department to regulate waste tire recycling.

(b) The application shall be filed in the form established by the local health department.

(2) Any waste tire recycler who recycles, at an out-of-state location, tires that are generated within the state, may apply for partial reimbursement to the Executive Secretary for the cost of transporting and processing the recycled tires as provided in Subsection 26-32a-107(1)(b).

(a) A waste tire recycler who requests partial reimbursement for waste tires recycled outside the state shall meet the following requirements:

(i) the recycler must be registered as required by Section R315-320-5;

(ii) the recycling site must be outside the state; and

(iii) the recycler must demonstrate that the waste tires or material derived from waste tires were generated within the State of Utah and either

(A) removed and transported by a tire transporter registered as required by Section R315-320-4 or a recycler registered as required by Section R315-320-5 or a person as defined in Subsection 26-32a-103(23)(c); or

(B) generated by a private person who is not a waste tire transporter as defined in Section 26-32a-103, and that person brings the waste tires to the recycler.

(b) A waste tire recycler who recycles Utah generated waste tires outside of the state may claim partial reimbursement

for waste tires removed from tire piles subject to:

(i) the requirements of Subsections R315-320-6(2) and 26-32a-107.5;

(ii) submission of the application as required in Subsection R315-320-6(2)(c); and

(iii) the application required in Subsection R315-320-6(2)(c) may be submitted at a minimum of monthly intervals.

(c) Any waste tire recycler requesting partial reimbursement for waste tires or material derived from waste tires recycled outside the state must submit an application to the Executive Secretary on a form designated by the Executive Secretary and shall contain the following:

(i) business name;

(ii) name of owner;

(iii) name of operator;

(iv) a brief description of the recycler's business;

(v) quantity, in tons, of waste tires or tire derived material for which partial reimbursement is being claimed, accompanied by documentation of recycling;

(vi) a description of how waste tires or material derived from waste tires were recycled;

(vii) a demonstration that the requirements of Subsection 26-32a-107(4) have been met; and

(viii) a demonstration that at least 100,000 waste tires, generated within the state, will be recycled each year.

(d) Any waste tire recycler that applies for the out-of-state recycling rebate for ground rubber must show that the ground rubber has been used as a component in a product.

(3) A waste tire recycler who qualifies for partial reimbursement may waive the reimbursement and request, in writing to the Executive Secretary, that the reimbursement be paid to a person who processes the waste tires or material derived from waste tires prior to receipt of such tires or materials by the recycler.

(4) In addition to any other penalty imposed by law, any person who knowingly or intentionally provides false information required by Section R315-320-5 or Section R315-320-6 shall be ineligible to receive any reimbursement and shall return to the Division of Finance any reimbursement previously received.

R315-320-7. Responsibilities of Executive Secretary For Processing Partial Reimbursement Requests for Waste Tires Recycled Outside Utah.

(1) The Executive Secretary, upon receipt of an application for reimbursement, shall:

(a) review the application for completeness;

(b) if the application is the initial application of the recycler, conduct an on-site investigation of the recycler's operation and waste tire use; and

(c) determine whether the recycler has met the requirements of Subsection R315-320-6(2).

(2) If the Executive Secretary determines that the recycler qualifies for partial reimbursement, an application for partial reimbursement along with a brief report of the results of the investigation and a dollar amount approved for payment shall be submitted to the Division of Finance.

KEY: solid waste management, waste disposal

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Notice of Continuation March 12, 1999 26-32a

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-54. Speech-Language Pathology Services.

R414-54-1. Introduction and Authority.

(1) The Speech-Language Pathology Program provides speech-language services to meet the basic speech-language pathology needs of Medicaid clients.

(2) Speech-language pathology services are authorized by 42 CFR, subsection 440.110(c)(1)(2), October 1992 edition, which is adopted and incorporated by reference.

R414-54-2. Definitions.

(1) The definitions in the Speech-language Pathology and Audiology Licensing Act, Title 58, Chapter 41, apply to this rule.

(2) In addition, "Client", "Categorically Needy", and "Medically Needy" have the same meanings as defined in R414-1-1.

R414-54-3. Client Eligibility Requirements.

Speech-language pathology services are available to Categorically Needy and Medically Needy individuals.

R414-54-4. Program Access Requirements.

A physician must refer clients to a speech-language pathologist before any service may be provided.

R414-54-5. Service Coverage.

(1) Speech-language services for individuals or groups with speech or language disorders or dysphagia include: evaluative, diagnostic, screening, treatment, preventive, and corrective processes. Only speech-language pathologists, or speech-language pathology aides under supervision of speech-language pathologists, may provide these services.

(2) All services must be related to a medical need. Treatments for social, educational, and developmental needs, while important to the individual, are not covered services.

(3) Only speech-language pathologists may bill for reimbursable services.

KEY: medicaid

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R434. Health, Health Systems Improvement, Primary Care and Rural Health.

R434-10. Physicians and Physician Assistants Grant and Scholarship Program.

R434-10-1. Purpose.

This rule, R434-10, provides criteria for the implementation of the Physicians and Physician Assistants Grant and Scholarship Program and the award of grant funds to physicians and physician assistants willing to work in a medically underserved rural area of the state and the award of funds to train physicians and physician assistants to practice medicine in a medically underserved rural area of the state.

R434-10-2. Definitions.

The definitions as they appear in Section 26-9-202 apply. In addition:

(1) "Approved Site" means an eligible site which is approved by the committee pursuant to Subsection 26-9-204(2)(a).

(2) "Department" means the Utah Department of Health.

(3) "Designated health professional shortage area" means a service area designated by the Secretary of Health and Human Services as having insufficient primary care physicians.

(4) "Eligible Site" means a hospital or medical clinic that the committee has designated as meeting the eligibility criteria established by the committee and is in a medically underserved rural area pursuant to Subsection 26-9-202 (4).

(5) "Grant" means a grant of funds under a contract to defray educational loans.

(6) "Obligated service" means service in a medical specialty needed at an approved site for a minimum of two years or a longer period to which the applicant agrees in a grant or scholarship contract.

(7) "Postgraduate training" means medical training in one of the following:

(a) a postgraduate training program in the United States accredited by the Accreditation Committee on Graduate Medical Education;

(b) a postgraduate training program in the United States accredited by the American Osteopathic Association Bureau of Professional Education;

(c) a postgraduate training program in Canada accredited by the Royal College of Physicians and Surgeons of Canada.

(8) "Physician Scholarship" means an award of money for educational expenses given to a person under a contract where the person agrees to accept the award in exchange for practicing medicine in a medical specialty needed, as determined by the committee, in an approved site following completion of postgraduate training.

(9) "Physician Assistant Scholarship" means an award of money for educational expenses given to a person under a contract where the person agrees to accept the award in exchange for practicing medicine as a physician assistant in an approved site.

R434-10-3. Physician Grant Administration.

(1) The department may provide a grant to repay loans taken for physician educational expenses.

(2) The physician grant recipient may not enter into any other similar contracts until he satisfies the obligated service described in the grant.

(3) For a physician grant recipient with a four year contract the state shall provide 20% of the grant at the completion of the first three months, 20% of the grant at the completion of year one, 20% at the completion of year two, 20% at the completion of year three, and 20% at the completion of year four.

(4) For a physician grant recipient with a three year contract the state shall provide 25% of the grant at the completion of the first three months, 25% of the grant at the completion of year one, 25% at the completion of year two, and 25% at the completion of year three.

(5) For a physician grant recipient with a two year contract the state shall provide 33% of the grant at the completion of the first three months, 33% of the grant at the completion of year one, and 34% at the completion of year two.

(6) The physician grant recipient must obtain an unrestricted license to practice as a physician in Utah before his first day of practice under the grant contract.

(7) The physician grant recipient must obtain approval from the committee prior to beginning obligated service at an eligible site.

(8) A physician grant recipient must obtain approval prior to changing the approved site where he fulfills his obligated service.

R434-10-4. Physician Assistant Grant Administration.

(1) The department may provide a grant to repay loans taken for physician assistant educational expenses.

(2) The physician assistant grant recipient may not enter into any other similar contracts until he satisfies the obligated service described in the grant.

(3) For a physician assistant grant recipient with a four year contract the state shall provide 20% of the grant at the completion of the first three months, 20% of the grant at the completion of year one, 20% at the completion of year two, 20% at the completion of year three, and 20% at the completion of year four.

(4) For a physician assistant grant recipient with a three year contract the state shall provide 25% of the grant at the completion of the first three months, 25% of the grant at the completion of year one, 25% at the completion of year two, and 25% at the completion of year three.

(5) For a physician assistant grant recipient with a two year contract the state shall provide 33% of the grant at the completion of the first three months, 33% of the grant at the completion of year one, and 34% at the completion of year two.

(6) The department may not provide a grant until the physician assistant passes the National Commission on the Certification of Physician Assistants/National Board of Medical Examiners Physician Assistant National Certification Exam.

(7) The physician assistant grant recipient must obtain an unrestricted license to practice as a physician assistant in Utah before his first day of practice under the grant contract.

(8) The physician assistant grant recipient must obtain approval from the committee prior to beginning obligated service at an eligible site.

(9) A physician assistant grant recipient must obtain

approval prior to changing the approved site where he fulfills his obligated service.

R434-10-5. Full-Time Equivalency Provisions for Grant Recipients.

(1) The annual grant amount is based on the level of full-time equivalency that the grant recipient agrees to work.

(2) A grant recipient who provides services for at least 40 hours per week may be awarded a grant based on the percentages outlined in Section R434-10-3 and R434-10-4.

(3) A grant recipient who provides services for less than 40 hours per week may be awarded a proportionately lower grant based on a full-time equivalency of 40 hours per week.

R434-10-6. Physician Grant Eligibility and Selection.

(1) In selecting a physician grant recipient for a physician grant, the committee shall evaluate the applicant based on the following selection criteria:

(a) the extent to which an applicant's training is in a medical specialty needed at an eligible site;

(b) the applicant's commitment to serve in a medically underserved rural area which may be demonstrated in any of the following ways:

(i) has lived in an area with fewer than 100 persons per square mile;

(ii) has rural work or educational experience;

(iii) has work or educational experience with rural populations such as the Peace Corps, VISTA, or the Extension Service of the Department of Agriculture;

(iv) other facts or experience that the applicant can demonstrate to the committee that establishes his commitment to a rural practice.

(c) the availability of the applicant to begin service, with greater consideration being given to applicants available for service at earlier dates;

(d) the length of the applicant's proposed obligated service, with greater consideration given to applicants who agree to serve for longer periods of time;

(e) the applicant's:

(i) academic standing;

(ii) prior professional or personal experience in medically underserved rural areas;

(iii) board certification or eligibility;

(iv) residency achievements;

(v) peer recommendations;

(vi) other facts that the applicant can demonstrate to the committee that establishes his professional competence or conduct;

(f) the applicant's financial need;

(g) the applicant's willingness to accept Medicare, Medicaid, or Utah Medical Assistance patients;

(h) the applicant's willingness to provide care regardless of a patient's ability to pay;

(i) the applicant's ability and willingness to provide care;

(j) the applicant's achieving an early match with an eligible site.

(2) Only the following medical specialities may receive an award under this program:

(a) anesthesiology,

(b) general surgery,

(c) internal medicine,

(d) obstetrics/gynecology,

(e) ophthalmology,

(f) orthopedic surgery,

(g) osteopathic general or family practice,

(h) pediatrics,

(i) psychiatry,

(j) radiology,

(k) urology.

(3) Only physicians who are available to begin practicing medicine in the state within one year from the date of application are eligible for this program.

(4) To be eligible for a grant, a physician:

(a) must be a United States citizen or permanent resident;

(b) must not have practiced medicine in rural Utah within three years prior to the date of application;

(c) must be enrolled in or have completed postgraduate training prior to submitting an application to participate in the grant program.

R434-10-7. Physician Assistant Grant Eligibility and Selection.

(1) In selecting a physician assistant grant recipient for a physician assistant grant, the committee shall evaluate the applicant based on the following selection criteria:

(a) the extent to which an applicant's training is needed at an eligible site;

(b) the applicant's commitment to serve in a medically underserved rural area, which may be demonstrated in any of the following ways:

(i) has lived in an area with fewer than 100 persons per square mile;

(ii) has rural work or educational experience;

(iii) has work or educational experience with rural populations such as the Peace Corps, VISTA, or the Extension Service of the Department of Agriculture;

(iv) other facts or experience that the applicant can demonstrate to the committee that establishes his commitment to a rural practice.

(c) the availability of the applicant to begin service, with greater consideration given to applicants available for service at earlier dates;

(d) the length of the applicant's proposed obligated service, with greater consideration given to applicants who agree to serve for longer periods of time;

(e) the applicant's:

(i) academic standing;

(ii) prior professional or personal experience in medically underserved rural areas;

(iii) results of the National certification exam;

(iv) preceptorship achievements;

(v) peer recommendations;

(vi) other facts that the applicant can demonstrate to the committee that establishes his professional competence or conduct.

(f) the applicant's financial need;

(g) the applicant's willingness to accept Medicare, Medicaid, or Utah Medical Assistance patients;

(h) the applicant's willingness to provide care regardless of a patient's ability to pay;

(i) the applicant's ability and willingness to provide care;

(j) the applicant's achieving an early match with an eligible site.

(2) Only physician assistants who are available to begin practicing medicine in the state within one year from the date of application may be eligible for this program.

(3) To be eligible for a grant, physician assistants:

(a) must be a United States citizen or permanent resident;

(b) must have passed the National Commission on the Certification of Physician Assistants/National Board of Medical Examiners Physician Assistant National Certification Exam;

(c) must not have practiced medicine in rural Utah within three years prior to the date of application.

R434-10-8. Extension of Grant Contract.

(1) A physician or physician assistant who has signed a grant contract for less than four years may apply on or after his first day of practice under a grant to extend his grant contract by one or two years, up to the maximum of four years total.

(2) The service obligation may be extended only at an eligible site.

(3) A physician or physician assistant who desires to extend his grant contract must inform the committee in writing of his interest in extending his grant contract at least six months prior to the termination of his unextended grant contract.

R434-10-9. Schedule of Breach of Grant Contract Repayment.

(1) A grant recipient who fails to complete the obligated service shall begin to repay the penalty to the department within 30 days of the breach. The department may submit for immediate collection all amounts due from a breaching grant recipient who does not begin to repay within 30 days.

(2) The amount to be paid back shall be determined from the end of the month in which the grant recipient breached the contract as if the grant recipient had breached at the end of the month.

(3) The breaching grant recipient shall pay the total amount due within one year of breaching the contract. The scheduled payback may not be less than four equal quarterly payments.

R434-10-10. Physician Scholarship Administration.

(1) The department may provide physician scholarship funds to a physician scholarship recipient for a maximum of four years of medical or osteopathic school or until completion of medical or osteopathic school, whichever is shorter.

(2) For each academic year the committee may award $12,000 to a physician scholarship recipient.

(3) The committee may pay tuition and fees directly to the medical or osteopathic school, and determine the amount and frequency of direct payments to the student.

(4) The physician scholarship recipient may not enter into a scholarship contract other than with the program established in Section 26-9-201 until the obligated service agreed upon in the state scholarship contract is satisfied.

(5) A physician scholarship recipient must work full-time, as defined by the physician scholarship recipient's employer and as specified in his contract with the department.

(6) A physician scholarship recipient must serve one year of obligated service for each year he received a scholarship under this program.

(7) The committee may cancel a scholarship at any time if it finds that the physician scholarship recipient has voluntarily or involuntarily terminated his medical or osteopathic school or postgraduate training, or it appears to be a reasonable certainty the physician scholarship recipient does not intend to practice medicine as required by statute, rules, and contract in a medically underserved rural area in the state.

(8) The physician scholarship recipient must begin postgraduate training within six months after he obtains a Doctor of Medicine or Doctor of Osteopathy degree. Postgraduate training must be continuous unless the physician scholarship recipient obtains prior approval from the director of the physician scholarship recipient's postgraduate training program and from the committee.

(9) The physician scholarship recipient must attend a minimum three year postgraduate training program.

(10) The physician scholarship recipient must obtain an unrestricted license to practice medicine in the state and begin practicing medicine for the agreed upon period of time at an approved site within six months of completion of postgraduate training.

(11) The physician scholarship recipient shall select for postgraduate training a residency in one of the following areas: family practice, general internal medicine, general pediatrics, or obstetrics/gynecology. If the physician scholarship recipient desires to choose a postgraduate training program in a medical specialty other than family practice, general internal medicine, general pediatrics, or obstetrics/gynecology, he must demonstrate the need for the medical specialty in a medically underserved rural area and obtain approval from the committee.

(12) Upon completion of postgraduate training, the physician scholarship recipient shall be responsible for finding employment at an eligible site in a medically underserved rural area of Utah.

(13) The physician scholarship recipient must obtain approval from the committee prior to beginning obligated service at an eligible site.

R434-10-11. Physician Assistant Scholarship Administration.

(1) The department may provide physician assistant scholarship funds to a physician assistant scholarship recipient for a maximum of four years for physician assistant school, or until completion of physician assistant school, whichever is shorter.

(2) For each academic year the committee may award $12,000 to a physician assistant scholarship recipient.

(3) The committee may pay tuition and fees directly to the physician assistant school, and to determine the amount and frequency of direct payments to the student.

(4) The physician assistant scholarship recipient may not enter into a scholarship contract other than with the program established in Section 26-9-201 until the obligated service agreed upon in the state contract is satisfied.

(5) A physician assistant scholarship recipient shall work full-time, as defined by the physician assistant scholarship recipient's employer and as specified in the contract.

(6) A physician assistant scholarship recipient must serve one year of obligated service for each year he received a scholarship under this program.

(7) The committee may cancel a scholarship at any time if it finds that the physician assistant scholarship recipient has voluntarily or involuntarily terminated his physician assistant education and training, or it appears to be a reasonable certainty the physician assistant scholarship recipient does not intend to practice medicine as a physician assistant as required by statute, rules, and contract.

(8) The physician assistant scholarship recipient must obtain a temporary physician assistant license and begin practicing medicine at an approved site for the agreed upon period of time within six months of completion of physician assistant education.

(9) The physician assistant scholarship recipient shall take the National Commission on the Certification of Physician Assistants/National Board of Medical Examiners Physician Assistant National Certification Exam at the soonest date after completion of physician assistant schooling. At the soonest date after the physician assistant scholarship recipient passes this exam he shall obtain a permanent unrestricted license as a physician assistant.

(10) If the physician assistant scholarship recipient fails the National Commission on the Certification of Physician Assistants/National Board of Medical Examiners Physician Assistant National Certification Exam, he must retake the exam within one year of failure of the National certification exam. If the physician assistant scholarship recipient fails the exam a second time, or fails to retake the exam, he shall be in default of the scholarship contract. The period when the temporary license is lost due to failing the exam and the physician assistant scholarship recipient is unable to practice at an approved site does not count against retiring the obligated service under the contract.

(11) Upon graduation from physician assistant schooling, the physician assistant scholarship recipient shall be responsible for finding employment at an eligible site in a medically underserved rural area of Utah.

(12) The physician assistant scholarship recipient must obtain approval from the committee prior to beginning obligated service at an eligible site.

R434-10-12. Physician Scholarship Applicant Eligibility and Selection.

(1) In selecting a recipient for a physician scholarship, the committee shall evaluate the applicant based on the following selection criteria:

(a) the applicant's commitment to serve in a medically underserved rural area, which may be demonstrated in any of the following ways:

(i) has lived in a rural area with fewer than 100 persons per square mile;

(ii) has rural work or educational experience;

(iii) has work or educational experience with rural populations such as the Peace Corps, VISTA, or the Extension Service of the Department of Agriculture;

(iv) has declared a commitment to practice in a medically underserved rural area as expressed in the essay which is required as part of the scholarship application;

(v) other facts or experience that the applicant can demonstrate to the committee that establishes his commitment to a rural practice.

(b) the applicant's need for assistance in financing a medical or osteopathic education;

(c) the applicant's academic ability as demonstrated by official transcripts and official medical or osteopathic school admission test scores;

(d) the applicant's evidence that he has been accepted by or currently attends a medical school accredited by the Liaison Committee on American Medical Education or osteopathic school accredited by the American Osteopathic Association Bureau of Professional Education;

(e) the applicant's personal and professional references demonstrating the applicant's good character and potential to successfully complete medical or osteopathic school.

(2) In selecting a physician scholarship recipient, the committee may give preference to:

(a) applicants who agree to serve in a medically underserved rural area of the state for four years in return for four years of scholarship assistance;

(b) applicants who agree to complete their postgraduate training in one of the following medical specialties: family practice, general internal medicine, general pediatrics, or obstetrics/gynecology;

(c) applicants from rural Utah.

(3) To be eligible to receive a physician scholarship, an applicant must be a United States citizen or permanent resident.

(4) Before the committee awards a scholarship, applicants must participate in an interview with the committee or its designee.

(5) To remain eligible to receive scholarship funds, an applicant must satisfactorily complete each year of medical or osteopathic school and be a matriculated student.

R434-10-13. Physician Assistant Scholarship Applicant Eligibility and Selection.

(1) In selecting an applicant for a physician assistant scholarship, the committee shall evaluate the applicant based on the following selection criteria:

(a) the applicant's commitment to serve in a medically underserved rural area, which may be demonstrated in any of the following ways:

(i) has lived in a rural area with fewer than 100 persons per square mile;

(ii) has rural work or educational experience;

(iii) has work or educational experience with rural populations such as the Peace Corps, VISTA, or the Extension Service of the Department of Agriculture;

(iv) has declared a commitment to practice in a medically underserved rural area as expressed in the essay which is required as part of the scholarship application;

(v) other facts or experience that the applicant can demonstrate to the committee that establishes his commitment to a rural practice.

(b) the applicant's need for assistance in financing a physician assistant education;

(c) the applicant's academic ability as demonstrated by official transcripts;

(d) the applicant's evidence that he has been accepted by or currently attends a physician assistant school accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association;

(e) the applicant's personal and professional references demonstrating the applicant's good character and potential to successfully complete physician assistant school.

(2) In selecting a physician assistant scholarship recipient, the committee may give preference to applicants from rural Utah.

(3) To be eligible to receive a physician assistant scholarship, an applicant must be a United States citizen or permanent resident.

(4) Before the committee awards a scholarship, applicants must participate in an interview with the committee or its designee.

(5) To remain eligible to receive scholarship funds an applicant must satisfactorily complete each year of physician assistant school and be a matriculated student.

R434-10-14. Physician Scholarship Recipient Obligations.

(1) A physician scholarship recipient must maintain minimum continuous registration to maintain medical or osteopathic student status until he completes all requirements for his degree. The maximum years leading to a degree may not exceed four years, unless extended pursuant to R434-10-16.

(2) A physician scholarship recipient must attend a minimum three year postgraduate training program.

(3) A physician scholarship recipient must obtain an unrestricted license to practice as a physician in Utah prior to beginning practice at the approved site.

(4) Within six months before and not exceeding one month following completion of postgraduate training, a physician scholarship recipient shall provide to the department documented evidence from an eligible site of its intent to hire him.

(5) Upon completion of postgraduate training, the physician scholarship recipient is responsible for finding employment at an eligible site in a medically underserved rural area of Utah.

(6) The physician scholarship recipient must obtain approval from the committee prior to beginning obligated service at an eligible site.

(7) A physician scholarship recipient must begin employment at the approved site within six months of completion of postgraduate training.

(8) A physician scholarship recipient, upon completion of postgraduate training, must demonstrate willingness to serve the underserved by:

(a) accepting Medicare, Medicaid, or Utah Medical Assistance Program patients;

(b) providing care regardless of patient's ability to pay;

(c) showing ability and willingness to provide care.

(9) The minimum length of obligated service is two years, or such longer period to which the applicant and the committee agree.

(10) The physician scholarship recipient must obtain committee approval prior to changing the approved site where he fulfills his obligated service.

R434-10-15. Physician Assistant Scholarship Recipient Obligations.

(1) A physician assistant scholarship recipient must maintain minimum continuous registration to maintain physician assistant student status until he completes all requirements for his degree. The maximum years leading to a degree may not exceed four years unless extended pursuant to R434-10-16.

(2) A physician assistant scholarship recipient shall take the National Commission on the Certification of Physician Assistants/National Board of Medical Examiners Physician Assistant National Certification Exam at the soonest date after completion of physician assistant schooling.

(3) Upon completion of physician assistant schooling, the physician assistant scholarship recipient is responsible for finding employment at an eligible site in a medically underserved rural area of Utah

(4) The physician assistant scholarship recipient must obtain approval from the committee prior to beginning obligated service at an eligible site

(5) Within three months before, and not exceeding one month following completion of physician assistant education and prior to beginning fulfillment of obligated service, a physician assistant scholarship recipient shall provide to the department documented evidence from the approved site of its intent to hire him.

(6) A physician assistant scholarship recipient, upon completion of physician assistant schooling, must demonstrate willingness to serve the underserved by:

(a) accepting Medicare, Medicaid, or Utah Medical Assistance Program patients;

(b) providing care regardless of patient's ability to pay;

(c) showing ability and willingness to provide care.

(7) A physician assistant scholarship recipient must begin employment at the approved site within six months of completion of physician assistant education.

(8) The minimum length of obligated service is two years, or such longer period to which the applicant and the committee agree.

(9) The physician assistant scholarship recipient must obtain committee approval prior to changing the approved site where he fulfills his obligated service.

R434-10-16. Extension of Contract with Scholarship Recipient.

(1) The committee may extend the period within which the scholarship recipient must complete his medical, osteopathic, or physician assistant education:

(a) if the scholarship recipient has a serious illness;

(b) if the scholarship recipient is activated by the military;

(c) for other good cause shown, as determined by the committee.

R434-10-17. Schedule of Breach of Scholarship Contract

Repayment.

(1) A scholarship recipient who:

(a) Fails to finish his professional schooling within the period of time agreed upon with the committee shall within 90 days after the deadline for completing his schooling or within 90 days of his failure to continue his schooling, whichever occurs earlier, shall repay:

(i) all scholarship money received according to a schedule established by contract with the committee;

(ii) if not repaid within one year of default, 12% per annum interest on unrepaid scholarship money calculated from the date each installment was received under the scholarship;

(iii) costs and expenses incurred in collection, including attorney fees.

(b) Finishes his schooling and fails to pass the necessary professional certifications or examinations within the time period agreed upon with the committee shall begin to repay to the department within one year of the breach:

(i) all scholarship money received according to a schedule established by the committee;

(ii) if not repaid within one year of default, 12% per annum interest on unrepaid scholarship money calculated from the date each installment was received under the scholarship;

(iii) costs and expenses incurred in collection, including attorney fees.

(c) Finishes his schooling and fails to take the necessary professional certifications or examinations within the time period agreed upon with the committee shall within one year of the breach:

(i) pay as a penalty twice the total amount of the scholarship money on a prorated basis according to a schedule established by the committee and 12% per annum interest on the unpaid penalty amount;

(ii) costs and expenses incurred in collection, including attorney fees.

(d) Finishes his schooling and becomes a physician or physician assistant but who fails to fulfill his obligated service shall begin to repay the penalty to the department within one year of the breach, pursuant to Subsection 26-9-210 (5).

(2) A physician scholarship recipient who fails to complete a minimum three year postgraduate training program within the time period agreed upon with the committee shall within 90 days after the deadline for completing his postgraduate training program or within 90 days of his failure to continue his postgraduate training program, whichever occurs earlier, repay:

(a) all scholarship money received according to a schedule established by the committee;

(b) if not repaid within one year of default, 12% per annum interest on unrepaid scholarship.

(3) The amount to be paid back shall be determined from the end of the month in which the scholarship recipient breached the contract as if the scholarship recipient had breached at the end of the month.

(4) The breaching scholarship recipient shall pay the total amount due within four years of breaching the contract. The scheduled pay back may not be less than four equal payments.

R434-10-18. Release of Recipient from Obligated Service.

(1) The committee may release a recipient from his obligated service without penalty:

(a) if the obligated service has been fulfilled;

(b) if he dies;

(c) for other good cause shown, as determined by the committee.

(2) Extreme hardship sufficient to release the recipient without penalty includes:

(a) inability to complete medical, osteopathic, or physician assistant school or fulfill obligated service due to permanent disability that prevents the recipient from completing school or performing any work for remuneration or profit;

(b) a family member, for which the recipient is the principal care giver, has a life-threatening chronic illness.

R434-10-19. Eligible Site Determination.

(1) Criteria to determine an eligible site include:

(a) within the medically underserved rural area:

(i) the percentage of the population with incomes under 200% of the federal poverty level;

(ii) the percentage of the population 65 years of age and over;

(iii) the percentage of the population under 18 years of age;

(iv) the infant mortality rate;

(v) the postneonatal mortality rate;

(b) distance to nearest physician or physician assistant and barriers to reaching the physician or physician assistant, e.g., winter driving conditions or mountainous roads'

(c) for physician eligible site determination, the ratio of population to physician medical specialty for which the site applied;

(d) for physician assistant eligible site determination, a minimum population to physician assistant ratio of one physician assistant per 1,500 persons, in addition to the number of primary care physicians at the site, the affect physician assistants may have on the practice of providers and the delivery of health care at the site; and

(e) letters of support from a majority of practicing physicians and physician assistants in service area, county and civic leaders, hospital administrator, business leaders, local chamber of commerce, citizens, and local health departments.

(2) The committee may give preference to sites which assure in their site applications that other community physicians will continue to see their fair share of Medicaid, Medicare, and Utah Medical Assistance patients.

(3) The committee may give preference to designated health professional shortage areas requesting one of the following medical specialties:

(a) family practice;

(b) internal medicine;

(c) obstetrics/gynecology;

(d) pediatrics;

(e) physician assistants.

(4) An eligible site approved to have a grant or scholarship recipient practice there must offer a salary and benefit package competitive with salaries and benefits of other providers in the service area.

R434-10-20. Eligible Bona Fide Loans.

(1) A bona fide loan may include the following:

(a) a commercial loan made by a bank, credit union, savings and loan association, insurance company, school, or credit institution;

(b) a governmental loan made by a federal, state, county, or city agency;

(c) a loan made by another person which is documented by a contract notarized at the time of the making of the loan; indicative of an arm's length transaction, and with competitive term and rate as other loans available to physician and physician assistant students; or

(d) a loan that the applicant conclusively demonstrates is a bona fide loan.

R434-10-21. Reporting.

The committee may require the recipient to provide information regarding the academic performance, commitment to medically underserved rural areas, continuing financial need, obligated service fulfillment, and other information reasonably necessary for the administration of the program during the period the recipient is in medical, osteopathic, or physician assistant school; postgraduate training; and in practice.

KEY: grants, physicians, physician assistants*, scholarships*
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Notice of Continuation October 8, 1998

R438. Health, Laboratory Services.
R438-13. Rules for the Certification of Institutions to Obtain Impounded Animals in the State of Utah.
R438-13-1. Introduction.

The purpose of these rules is to enable the proper execution of Section 26-26, for controlling the humane use of animals obtained from impound establishments for the diagnosis and treatment of human and animal diseases; the advancement of veterinary, dental, medical, and biological sciences; and the testing, improvement, and standardization of laboratory specimens, biologic products, pharmaceuticals and drugs.

R438-13-2. Definitions.

"ADMINISTRATOR" means a Department of Health staff member appointed by the Director to administer these rules.

"ANIMAL" means any unredeemed, abandoned or stray dog or cat impounded and requested by an institution for purposes specified in Section 26-26-(1-7), as amended, and these rules. Animals obtained from any source other than an establishment are not covered by these rules. Owners of voluntarily released animals may elect by signature whether the animal may or may not be used in research.

"ANIMAL FACILITY" means an area where impounded animals are housed or kept for recovery.

"COMMITTEE" means a body of seven individuals appointed by the Director for purposes of these rules.

"DEPARTMENT" means the Utah Department of Health.

"DIRECTOR" means the Executive Director of the Department of Health.

"ESTABLISHMENT" means any public place maintained for the impounding, care, and disposal of animals seized by lawful authority.

"INSPECTION TEAM" means an animal control officer recommended by the Utah Animal Control Officers' Association (UACO) and one licensed veterinarian, both approved by the institution being inspected and appointed by the Administrator.

"INSPECTOR" means a representative of the United States Department of Agriculture (USDA) or a qualified person acceptable to the Director.

"INSTITUTION" means any school or college of agriculture, veterinary medicine, medicine, pharmacy, dentistry, or other educational, hospital or scientific establishment, as determined by the committee and approved by the Director, which is properly concerned with the investigation of or instruction concerning the structure or functions of living organisms, or the cause, prevention, control, or cure of diseases or abnormal conditions of human beings or animals.

"PHYSICIAN" means any person who is licensed by the Utah Department of Commerce under either the Utah Medical Practice Act or the Utah Osteopathic Medicine Licensing Act to practice medicine and surgery in all its branches, or a physician in the employment of the government of the United States who is similarly qualified.

"VETERINARIAN" means any person who is licensed by the Department of Commerce under the Veterinary Practice Act to practice veterinary medicine, surgery, and dentistry or a veterinarian in the employment of the government of the United States who is similarly qualified.

R438-13-3. Department of Health - Power to Certify Institutions.

The Department, under the powers and duties conferred upon it by Section 26-26-2, may issue a certificate to obtain impounded animals to any institution requesting such certification upon being assured that the institution meets the requirements of Section 26-26-1 et seq., and has satisfied the requirements for certification as detailed in these rules, as determined after an inspection.

R438-13-4. Committee - Responsibilities, Membership, and Term of Appointment.

There is created an Impound Animals Advisory Committee pursuant to Section 26-1-20 Utah.

A. Responsibilities

The committee shall review and evaluate all applications of institutions requesting certification under these rules, or applications for renewal of certification, as well as cause to be investigated any complaints of violation of Section 26-26-1 et seq. these rules by any individual, institution, or establishment, and shall inform the Director of its findings and make recommendations for or against certification or enforcement of the law and these rules.

B. Membership

The committee shall include not less than one representative from the following: institutions directly involved with the use of laboratory animals, a physician, a representative of establishments, a veterinarian, a representative of animal welfare advocates, and two other members to be appointed by the Director, one of which must represent the public. The committee shall elect a chairman and a vice chairman from its membership for terms not to exceed one year. The committee shall meet a minimum of two times annually.

C. Terms of Appointment

Appointments shall be made for a period of three years. Any member may be appointed to a second consecutive term; however, no more than two consecutive terms may be served. A former committee member may return after an absence of one term.

R438-13-5. Administrator - Duties and Responsibilities.

The Director may appoint a member of the Department staff to be responsible for the administration of these rules. The administrator shall be a nonvoting member of the committee and shall issue certificates, receive and review all applications and records, conduct investigations, and receive and review reports of an inspector, consistent with the requirements of Section 26-26 and shall advise the committee of all findings.

R438-13-6. Requirements for Institutions for Certification.

Any institution requesting certification under this act shall be found to have the proper personnel and facilities for the care and humane treatment of any animal procured under this act, and so shown by the application and by an inspection of the animal facilities by an inspector.

A. Personnel

The care and management of animals shall be performed by qualified personnel.

1. The animal facilities shall be under the direct

supervision of a diplomate of the American College of Laboratory Animal Medicine, a physician, veterinarian, or dentist, or a person formally trained in the biological sciences and having no less than three years of pertinent training and experience in animal care, or a person qualified by specialized education, training and experience essentially equivalent to the above categories.

2. Animal care personnel shall be qualified by training and experience in the care of animals as determined by the animal facility supervisor.

3. Apprentice personnel shall be under the direct and immediate supervision of regular animal care personnel.

4. The size of the animal care staff shall be adequate to assure daily attention to the needs of the animals.

5. Provision shall be made for the emergency care of animals whenever needed.

B. Physical Facilities and Animal Care

1. Sanitary practices and humane care of animals shall conform to standards as described in the National Institutes of Health Publication No. 86-23 revised 1985, "Guide for the Care and Use of Laboratory Animals" and the Animal Welfare Act 9 CFR parts 1, 2, 3 1990 edition which are incorporated by reference.

2. At the conclusion of an experiment which does not require euthanasia for the collection of samples, the institution may, providing the establishment agrees and for the purpose of adoption, return to the establishment any healthy animal posing no contagious threat to humans. If the establishment does not agree to accept the animal, the institution shall euthanize the animal.

C. Inspections

Institutions seeking initial certification must submit evidence of a successful on-site inspection of their impounded animal facilities by the United States Department of Agriculture (USDA). Institutions unable to be inspected by USDA are subject to inspection by a Department of Health inspection team. After initial certification, institutions wishing to maintain certified status shall be inspected at least annually by the USDA, an inspection team or both.

D. Fees

Fees for certification will be set and administered by the Department, with approval of the State Legislature.

E. Animal Care and Use Committee

Each institution shall appoint an animal care and use committee. This committee should include a scientist from the institution, a doctor of veterinary medicine, and a person who is not affiliated with the institution in any way other than a member of the committee.

This committee should be responsible for evaluating the animal care and use program. Its duties should include those described in NIH publication No. 86-23, Guide for the Care and Use of Laboratory Animals.

R438-13-7. Application for Certification.

Application for certification shall be initiated by the institution wishing to obtain unredeemed impounded animals. The application shall be made on a form furnished by the Department, and shall include:

A. the name and address of the institution;

B. the name of the person who will be responsible for the supervision of procurement and handling of the animal. The Administrator must be notified within ten days of personnel changes;

C. an estimate of the maximum number and species of animals to be obtained by the institution during the calendar year.

D. the names of members of the institution's animal care and use committee.

R438-13-8. Issuance of Certificate.

A. Upon receipt of an application, an inspector shall review the animal facility of the institution and shall submit a report of the review to the committee. The inspector's report shall be attached to the application and the recommendations made by the committee and submitted to the Director. It shall be the prerogative of the Director to determine if the institution meets the requirements of Section 26-26-1 et seq. and these rules.

B. A certificate, once granted, cannot be transferred.

C. Any certificate shall be valid only for the calendar year for which it is issued. Any institution wishing to renew a certificate shall do so on a form furnished by the Department, and shall state any changes made or contemplated since the most recent application was submitted.

D. The certificate of approval or duplicate thereof, as supplied by the Department, shall be displayed in a prominent place in the approved animal quarters or approved laboratory.

R438-13-9. Records.

Each institution shall appoint a person to be responsible for the procurement of and maintenance of records on all animals obtained from establishments. Records shall be kept by the institution of all animals procured under certification on forms provided by the Department. Information for the purpose of record keeping shall be provided on the "Record of Transfer and Receipt of Impounded Animal" form and the "Requisition of Impounded Animals" form.

A. Records shall include:

1. a description of the animal, including breed, if known;

2. the date and place where the animal was procured;

3. the physical condition of the animal when received by the institution;

4. the cage or pen number or other identification;

5. the experimental or scientific use of the animal, including information as to whether anesthesia was or was not used;

6. name and address of person who adopted animal, if adopted;

7. the method of euthanasia of the animal, if euthanasia is performed.

B. The institution is to provide a copy of the "Record of Transfer and Receipt of Impounded Animals" form, with parts A and B completed, to an establishment for each animal received.

C. After the final disposition of the animal, a copy of the completed form shall be mailed or delivered to the administrator by the institution.

The completed form shall be maintained by the institution

for not less than two years and shall be made available for inspection at any time deemed necessary by the Director or his authorized representative.

R438-13-10. Requisitions.

An establishment may require written requisitions for animals prior to their release to an institution. The requisition shall be executed in duplicate on forms provided by the Department. The original shall be furnished to the establishment and one copy retained by the institution. The requisition shall include:

A. name and address of the institution;

B. name and address of the establishment;

C. number, species, size and sex of the animals desired;

D. number of certificate;

E. date requisition was issued.

R438-13-11. Duties of Establishments.

A. Each establishment shall keep a public record of all animals received and disposed.

B. Whenever a request for impounded animals is submitted to a supervisor of an establishment, it shall be his duty to make available to the institution the number of animals of the species, size, and sex specified in the requisition, from the unredeemed animals in his charge. If the number of animals specified by the requisition is not available, the supervisor shall immediately make available all unredeemed animals as are then in the establishment under his supervision. The supervisor shall then withhold from destruction all unredeemed animals of the species, size, and sex specified by the requisition until the number of animals is sufficient to complete the requisition. The institution shall accept the available animals and provide for their transportation to the institution.

C. The institution shall compensate the establishment for the actual expense for holding animals beyond the time of notice to the institution of their availability until they have been obtained by the institution.

D. At any time after a requisition has been issued to an establishment and before notice of the availability of the animals requisitioned has been made to the institution, the institution may cancel all or any unfilled part of the requisition.

E. It shall be unlawful for any establishment to release any animal to an institution not holding a valid certificate issued under these rules.

R438-13-12. Receipts.

Whenever unredeemed animals are received by an institution, the institution shall furnish the establishment a receipt therefor. Receipts shall be issued in triplicate and shall be countersigned by a representative of the establishment. A copy shall be mailed or delivered to the administrator by the institution and one copy shall be retained by the institution. A receipt shall be issued for each animal obtained. The receipt shall show the date that the animal was delivered to the agent of the institution by the establishment, and the signature of the person to whom it was delivered.

R438-13-13. Maintenance of Animals by the Institution.

A. No animal obtained by an institution on requisition as herein provided shall be sold or given into the possession of any other person or organization unless released to its previous owner or adopted after the experiment to a private citizen for possession as a pet. All animals shall be transported immediately from the establishment to the institution in a humane manner and maintained by the institution for the remainder of the life of the animal unless adopted under the provision of these rules. Nothing shall prohibit the institution from releasing an animal to its previous owner if satisfactory proof of ownership is provided to the institution. The institution may require the owner to reimburse the institution for actual expenses for maintaining the animal from the time it was received by the institution until it was delivered to the previous owner.

B. Any animal procured by an institution under these rules shall be handled, transported and disposed of in a humane manner.

R438-13-14. Revocation of Certification.

Violation of Section 26-26-1 et seq. or these rules violates Section 26-23-6 and is cause to consider the cancellation of any certificate issued under these rules.

A. Notification of Intent To Revoke

Upon receipt of evidence of a violation, the Director shall issue written notice, pursuant to Section 63-46b-3, of intent to revoke the certificate of the institution 30 days following receipt of notice.

B. Notice of Hearing

The institution shall have 15 days from receipt of notice to file a written response to show why the certificate should not be revoked, and to request an informal hearing under Sections 63-46b-4 and 63-46b-5. If requested by the institution, the Director shall grant an informal hearing upon 15 days written notice.

C. Action On Hearing

If after the hearing the Director decides the certificate shall be revoked, copies of the revocation shall be sent to the institution and all establishments providing animals for the institution. Institutions may seek review of agency action as outlined in Section 63-46b-12.

R438-13-15. Renewal of Canceled Certificate.

An institution may submit an application for the renewal of a certificate canceled by reason of violation of the law or these rules not less than 30 days after final action was taken. The application shall be accompanied by documented evidence that the reason for cancellation has been removed. Upon being assured that the institution is acting in good faith and upon receipt of a favorable recommendation from the committee, the Director may issue a new certificate.

R438-13-16. Complaint.

Anyone who files a complaint with the Department against an individual, institution or establishment violating any part of R438-13 et seq., shall supply in writing specific information regarding the alleged violation or violations. The complaint shall include the time, date, place, individual or persons involved and the names of witnesses who may be called upon to testify. This statement must be in the form of a sworn affidavit and must be notarized. Preliminary investigations of complaints

may be conducted at the discretion of the Director or a designated representative without the filing of a notarized sworn affidavit.

KEY: animals, laboratories, laboratory animals
1989 26-26-1 to 7
Notice of Continuation March 18, 1999

R495. Human Services, Administration.
R495-879. Parental Support for Children in Care.
R495-879-1. Child Support Liability.

The Office of Recovery Services will establish and enforce child support obligations against parents whose children are in out-of-home placement programs, administered by the Department of Human Services or Department of Health. The department shall consider fees for outpatient and day services separate from child support payments. Establishment and enforcement of child support shall be pursuant to the Uniform Civil Liability for Support Act, Section 78-45.1 et seq.; Public Support of Children, 62A-11-301 et seq.; Support and expenses of child in custody of an individual or institution, 78-3a-49;

R495-879-2. Support Guidelines.

Child support obligations shall be calculated in accordance with Child Support Guidelines, Section 78-45-7.2 through 78-45-7.21.

R495-879-3. Criteria For Deviating From Guidelines.

The following criteria may be used to deviate from the guidelines when a prior order does not exist.

1. Deduction For a Disabled Child.

A deduction from gross income shall be allowed each year, equal to the federal tax exemption for dependents, for each year a child was cared for at home if that child's disability would ordinarily have qualified him for residential care.

2. Medical Payments.

A deduction from gross income shall be allowed for medical expenses equal to the IRS deduction allowed the previous year on the parents' 1040 tax return.

3. Children Over 18 Years Old.

Children up to 23 years of age shall be included on the Child Support Worksheet if the parents are claiming the child as an exemption on their income tax return. Parents must provide prior year's tax return and a statement that they will be claiming child on current year tax return.

4. Federal Poverty Level.

If the parent is responsible for providing food, clothing, shelter, transportation, and other life sustaining items for his family, and lives at or below the federal poverty level, he shall not be assessed child support for a child placed in out-of-home care.

R495-879-4. Establishing an Order.

ORS may modify and establish child support orders through the Public Support of Children Act, 62A-11-301 et seq.; Administrative Procedures Act, Section 63-46b-1 et seq.; Jurisdiction - Determination of Custody questions by Juvenile Court, Sections 78-3a-17(7)(a) through (b) and Section 78-3a-17(8); and in accordance with R527-200.

R495-879-5. Good Cause Deferral and Waiver Request.

If collections interfere with family unification, a division may, using the Good Cause-Deferral/Waiver (form 602), request a deferral or waiver of arrears payments. The request may be applied to current support when an undue hardship is created by an unpreventable loss of income to the present family. A loss of income may include non payment of child support from the other parent for the children at home, loss of employment, or loss of monthly pension or annuity payments. The request shall be sent to ORS for review and to the director of the Division for approval. The request shall not be approved when it proposes actions that are contrary to state or federal law.

R495-879-6. In-Kind Support.

ORS may accept in-kind support, based on parents' service to the program in which the child is placed. The service provided by a parent must be approved by the director of the Division responsible for the child's care. The approval should be based on a monetary savings or an enhancement to a program. It is preferable for the service to benefit the program in which the child is receiving care. However, if geographical distances prohibit direct service, then the division director may approve support services for in-kind support that do not directly offset costs to the agency. A memorandum of understanding shall be signed by the agency and the parent specifying the type, length, and value of service. Verification of the service hours worked must be provided by the division to ORS (using Form 603) within 10 days of the end of the month in which the service was performed. The verification shall include the dates the service was performed, the number of hours worked, and the total credit amount allowed. Unless approved by the director of the Department, in-kind support approved by one agency shall not be used to reduce child support owed to another agency. In-kind support shall not be approved when it proposes actions that are contrary to state or federal law.

R495-879-7. Extended Visitation During The Year.

A rebate shall be granted to a parent for support paid when a child's overnight visits equal 25% or more of the service period. The rebate will only be provided when the service period lasts six months or more. The rebate will be proportionate to the number of days at home compared to the number of days in care. One continuous 24-hour period equals one day.

KEY: child support, custody of children
1994 62A-1-111(16)
Notice of Continuation March 11, 1999 62a-4a-116
62A-5-109(1)
62A-7-124
62A-11-302
62A-12-206
78-3a-49
78-45-7.2 through 78-45-7.21

R501. Human Services, Administration, Administrative Services, Licensing.

R501-14. Criminal Background Screening.

R501-14-1. Criminal Background Screening.

A. Authority

1. Pursuant to UCA 62A-2-120 and UCA 62A-4a-413, a Bureau of Criminal Identification, screening shall be conducted on licensees and persons associated with a licensee of a public or private agency or individual licensed by the Department of Human Services, referred to as DHS, to provide services for children.

2. Pursuant to UCA 78-30-3.5(2)(a), a criminal background screening shall be conducted as part of the Preplacement Adoptive Study.

3. The National Child Protection Act, Public Law 103-209, authorizes a state to request a nationwide background check for the purpose of determining whether a provider has been convicted of a crime that bears upon an individual's fitness to have responsibility for the safety and well-being of children.

B. Purpose

The purpose of the criminal background screening, referred to as CBS, as a part of the licensing process for DHS, is to protect children in licensed programs from individuals who have been convicted of serious crimes, or individuals whose conduct or pattern of conduct is contrary to the safety and well-being of children.

R501-14-2. Definitions.

A. "Administrative Law Judge" means an employee of the DHS who acts as an independent decision maker who considers the evidence introduced at the hearing and renders a decision based solely on that evidence and all relevant law and policy, herein referred to as ALJ.

B. "Adult" means a person 18 years of age, or older.

C. "Authorized Worker" means the director or designee of a facility or an employee of DHS regional offices.

D. "Authorized DHS Worker" means an employee of the Department of Human Services authorized to have access to OL and CBS information as determined by the Director, Office of Licensing, DHS.

E. "Bureau of Criminal Identification" means the designated state agency including "terminal agency users" of the Division of Criminal Investigation and Technical Services Division, within the Department of Public Safety, referred to as DPS, responsible to maintain criminal records in the State of Utah, herein referred to as BCI.

F. "Consumer" means an individual, i.e., client, resident, customer, etc., who receives services from a licensee.

licensee or.

G. "Direct supervision" means that the licensee or person associated with the licensee is never with a client without their supervisor present.

H. "Director"means the person responsible, as delegated by the governing body, for the technical and programmatic aspects of the program. This person should provide direct supervision of the day-to-day aspects of the program operation.

I. "Department of Human Services" means the State Department authorized to provide human services, including licensing, herein referred to as DHS.

J. "Department of Human Services/Criminal Background Screening Committee" means the committee designated by the Director of DHS to review criminal background information, herein referred to as DHS/CBS Committee.

K. "The Division of Child and Family Services" means the DHS Division which operates regional human service offices, herein referred to as DCFS.

L. "The Utah Department of Public Safety" means the Department with the policy making functions and regulatory and enforcement powers pertaining to public safety, herein referred to as DPS.

M. "The Division of Services for People With Disabilities" means the DHS Division responsible for providing services for people with disabilities, herein referred to as DSPD.

N. "Employee" means a person who performs services for a licensee in a paid or otherwise compensated capacity.

O. "Frequent visitor" means an adult who visits on a recurring basis in a home where home based care is provided.

P. "GRAMA" means the Government Records Access and Management Act that covers information access and privacy of provider files. Refer to UCA 63-2-101(2), Section 45, CFR 5, 1990, Part 2, Section 7 of the Social Security Act; and in the Federal Privacy Act of 1974.

Q. "Human services licensee or licensee" means a youth program, resource family home, or a facility or program that provides services, care, secure treatment, inpatient treatment, residential treatment, residential support, adult day care, day treatment, outpatient treatment, domestic violence treatment, child placing services, or social detoxification licensed by the Office of Licensing.

R. "Identifying information" means individual data including, but not limited to; name, all aliases, date of birth, social security number, and driver license, or state identification card.

S. "Members of Governing Body" means the individuals who comprise the Board of Trustees, Directors or other body who has the ultimate authority and responsibility for the conduct of the licensee.

T. "Office of Administrative Hearings" means the office in DHS which conducts hearings according to the Utah Administrative Procedures Act, herein referred to as OAH.

U. "Office of Licensing" means the office in DHS, authorized by law, to license facilities and programs, herein referred to as OL.

V. "Owner" means anyone listed in the Articles of Incorporation, Limited Partnership, etc. who has a legal interest in or legal right to the possession and to direct the affairs of the program.

W. "Person associated with the licensee" means any owner, director, member of the governing body, employee, provider of care, or volunteer of human service licensee. Also, any person 18 years of age or older who resides in a home or is a frequent visitor where home-based care is provided.

X. "Provider of care" means a person who provides direct services for licensee consumers.

Y. "Provider" means a public or private agency, owner, director, member of governing body, employee, volunteer, or other individual having a license to provide services to children.

Z. "Utah Computerized Criminal History Data Base"

means the internal, computerized data bases maintained by BCI/DPS, herein referred to as UCCH Database.

AA. "UAPA" means the Utah Administrative Procedures Act as found in UCA 63-46b-1 through UCA 63-46b-21, herein referred to as UAPA.

BB. "Volunteer" means a person other than a parent or guardian of a child or an adult receiving care in the facility, who performs services for a licensee in a non-paid capacity.

R501-14-3. Procedure for Criminal Background Screening.

A. All proposed licensees and persons associated with the licensee who are licensed to provide services for children, shall submit a Consent and Release of Liability and Request for Background Screening form to the DHS OL for criminal background screening. Each licensee and person associated with the licensee will attach a copy of one photo identification issued by a governmental agency, either a driver license, or a state issued identification card, and their Social Security number. The Utah State governmental identification must show an address identical to the Consent and Release of Liability and Request for Background Screening form, to establish residency.

B. Persons 18 years of age or older residing in the home or frequent visitors of home based care must also comply with this requirement.

1. A licensee shall submit the identifying information to DHS for criminal background screening prior to hiring a new employee. The licensee assumes all liability if an individual is hired prior to receiving the criminal background screening approval. The licensee is also responsible for directly supervising individuals hired before receiving the required background screening approval. In the case of emergency hiring, a licensee shall immediately submit the identifying information to DHS for criminal background screening.

2. An application for a new license will not be approved until the criminal background screenings have been completed. For renewal licenses in case of emergency or need for immediate placement of a child, a conditional license may be issued for a maximum of thirty days to allow for the criminal background screening to be completed.

3. A licensee applying for license renewal will have thirty days prior to license expiration to submit the identifying information of all licensees and persons associated with the licensee to DHS for criminal background screening.

4. A home-based licensee applying for license renewal will have thirty days prior to license expiration to submit to DHS for criminal background screening the identifying information on all persons associated with the licensee.

C. When the OL receives the identifying information from the applicant licensee, the OL will access the UCCH Database to conduct the criminal background screening for a determination of whether or not the applicant has been convicted of any crime under the laws of the State of Utah.

D. When a licensee or person associated with a licensee has not lived in Utah for the last five consecutive years, or has unexplained gaps in work or residence record, the request for a FBI national criminal history record check will be made by OL. The licensee or person associated with the licensee shall be responsible to provide the OL with completed fingerprint cards and a cashier's check or money order for the cost of the nationwide check within 10 days after receiving the request. Licensees or persons associated with the licensee may also be required to provide the OL with a criminal history from the states they have lived in, upon request by the OL. The person associated with the licensee is responsible for all costs associated with obtaining the criminal history. The criminal history shall be provided within 90 days of the date of the OL request. For persons associated with the licensee who are citizens of foreign countries and have not lived in Utah for the last five consecutive years, the OL may accept a photo copy of both the front and back of U.S. Department of Justice Immigration and Naturalization Service resident alien card to verify the screening was accomplished prior to entry into the United States. The OL may also accept a copy of a criminal history from the country of citizenship to determine if the individual has been convicted of any crime. Either a copy of a resident alien card or criminal history from the foreign country must be submitted to the OL within 90 days after requested by the OL.

E. If a licensee or person associated with the licensee does not provide the requested information and fees within the time frames specified, their application will be denied and they will not be eligible to provide services for the program or children.

F. An applicant requesting initial licensure for a program serving children, who has lived or operated programs in Utah for less than five years, may be screened through the nationwide FBI process.

G. Licensees or persons associated with the licensee who have complied with the above requirements, may continue to work under direct supervision pending the outcome of the criminal background screening.

H. If a licensee or person associated with the licensee has an arrest record without a final disposition, including, but not limited to the following: warrant issued, plea held in abeyance, court date pending, diversion agreement, adjudication withheld, the background screening consent and release of liability will be returned to the licensee or authorized worker. The OL will not process criminal background screenings until there is a final disposition.

R501-14-4. Results of Screening.

When the criminal background screening is completed, OL will take the following action:

A. Approval:

If a licensee or person associated with the licensee is found to have no criminal history record, or if the only offenses are misdemeanors or infractions not involving domestic violence, lewdness, battery, offenses identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense, and the conviction date is older than five years, a notice will be sent to the authorized DHS worker stating that the person is approved to provide services for the licensed program serving children.

B. Denial:

1. A licensee or person associated with a licensee convicted of a felony shall not be given a background screening clearance required to provide services for the licensed program serving children.

2. A licensee or person associated with a licensee

convicted of a misdemeanor or infraction involving an offense identified as domestic violence, lewdness, battery, or an offense identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense, shall not be given a background screening clearance to provide, or volunteer, services for the licensed program serving children.

3. If a licensee or person associated with a licensee has been convicted within the last five years of a misdemeanor or infraction not listed in paragraph 2 above, a further study of the criminal and court records will be required. A comprehensive review of the individual circumstances shall be conducted by the DHS/CBS Committee.

4. If a licensee or person associated with a licensee has a criminal history record that indicates there are misdemeanor or infraction offenses, a misdemeanor or infraction conviction, conduct, or pattern of conduct, or failure to disclose a criminal conviction on the Consent and Release of Liability and Request for Background Screening form, it may result in a denial of a criminal background clearance. Further study of the criminal and court records by the DHS/CBS Committee will be conducted.

5. If a licensee or person associated with a licensee may have a criminal record, the OL may send a notice to the licensee or authorized worker requesting a fingerprint card and fee to be submitted to the OL within 72 hours after receiving the notice.

a. The required fingerprint card must be obtained from OL because these cards are stamped with DHS OL. Use of other cards may result in difficulties in completing the BCI screening, which may cause a loss of license or employment.

b. The person shall be fingerprinted either by the local law enforcement agency or an agency approved by law enforcement.

c. The fingerprinted card and the fee, in the form of a money order or cashier's check made payable to Utah DPS BCI, shall be sent to DHS OL for processing. This shall be completed by the person associated with a licensee. Failure to submit the fingerprint card and fee will result in the background screening application being denied and the person associated with the licensee will not be eligible to provide services for children.

d. The fingerprint card and fee will be submitted to the DPS BCI by the OL.

e. DPS BCI will submit the results and cards to OL.

f. The DHS/CBS committee will concurrently review the misdemeanor and infraction offenses within the last five years to determine whether or not the licensee or person associated with a licensee shall be approved or denied.

R501-14-5. DHS/CBS Committee Review.

A. A DHS/CBS Committee composed of members designated by the Director of DHS representing the various Divisions of DHS shall conduct a comprehensive review of the criminal background screening results at least twice a month.

B. The Committee shall, at a minimum, review the date and the type of offense or conviction, written documentation, the legal status of the individual, conduct or pattern of conduct, and if the criminal conviction was disclosed on the Consent and Release of Liability and Request for Background Screening form.

C. The committee shall maintain a record of the review to include the findings of fact, conclusions of each case, and a copy of the UCCH record and fingerprint card, when appropriate.

R501-14-6. Results of the DHS/CBS Committee Review.

A. Approval: If based upon DHS/CBS committee review, a decision is reached to approve a licensee or person associated with a licensee, a criminal background screening clearance shall be issued.

B. Denial:

1. If, based upon DHS/CBS Committee review of the circumstances, there exists credible evidence that the licensee or person associated with a licensee, poses a threat to the safety and health of the consumers being served by the human service program, a criminal background screening clearance shall not be issued.

2. If a decision is reached to deny, or revoke, proper legal notice of agency action will be sent to the licensee or applicant by the DHS or the OL.

3. The licensee or person associated with the licensee may request a hearing in accordance with the UAPA, UCA 63-46b.

R501-14-7. Conviction After Licensure.

If a licensee or person associated with the licensee is convicted of a felony, misdemeanor, or infraction after a license is issued, the licensee has five working days to notify OL. Failure to notify will result in automatic, immediate suspension of the license. When notice of a conviction is received, OL will respond as stated in UCA 501-14-3, et seq.

R501-14-8. Confidentiality.

A. The results of the criminal background screening shall only be released to individuals approved by the Department of Human Services who have signed a Non-Disclosure statement, which includes acknowledging the existence or non-existence of a criminal history by an Authorized DHS Worker. The information will be disclosed according to UCA 53-5-214.

B. The results of the criminal background screening will not be given over the telephone. The information must be requested in writing with the proper releases.

C. All documents relating to a criminal background screening must be maintained and stored as confidential material. When determined the document is no longer needed it must be destroyed, in a manner that secures its privacy, i.e., shredded, burned, etc.

R501-14-9. Retention of Identifying Information, Fingerprint Cards, and Criminal Background Screening.

A. Identifying Information and criminal background screening results shall be retained by the licensee for the duration of the person's association with the licensee. Screening results cannot be shared, transferred, or further disseminated to any other licensee or individual.

B. Identifying information, fingerprint cards, and criminal background screening results of persons whose background screening have been denied, and fingerprint cards for persons approved, shall be retained in the OL, pursuant to UCA 63-2-101, et seq.

R501-14-10. Expungement.

A. Licensees and persons associated with a licensee whose background screening applications have been denied due to a criminal record, may request further information or expungement of the record through the DPS BCI pursuant to UCA 77-18-2.

B. When a criminal record is expunged, the licensee or person associated with a licensee may re-apply for a background screening clearance.

C. Information regarding procedures for criminal record expungement may be obtained from BCI. The costs of expungement are the responsibility of the licensee or person associated with the licensee.

R501-14-11. Administrative Hearing.

A. A licensee or person associated with the licensee, who has been convicted of a felony, has no right to a UAPA hearing.

B. A licensee or person associated with the licensee who has been denied a license or employment based upon a misdemeanor or infraction conviction may request a hearing in accordance with the UAPA. A licensee or person associated with the licensee requesting a hearing may continue to work under direct supervision until the hearing decision is issued. The person associated with the licensee or a licensee has no right to a UAPA hearing, unless there is a disputed issue of fact with the DHS policy.

C. When action to deny, revoke, or suspend a license is based upon a review by the DHS/CBS Committee and new evidence not considered by the committee is introduced at the hearing, the committee's representative may request that the case be remanded to the committee to consider the new evidence.

1. If the committee determines denial, revocation, or suspension is still warranted after further review, the committee chairperson will notify both the person associated with the licensee or the licensee and the OAH. The ALJ may then reconvene the hearing if necessary to complete the record. A final decision will be issued based on all of the evidence in the record.

2. If, after reviewing the new evidence, the committee recommends licensure, the OL will then send an appropriate notice to the licensee with a copy to OAH. After receiving notice that the license in dispute has been granted, OAH will close it's files without issuing a decision.

KEY: licensing, human services
March 22, 1999 **62A-2-120**
62A-4a-413

R527. Human Services, Recovery Services.
R527-430. Administrative Notice of Lien-Levy Procedures.
R527-430-1. Authority.

This rule establishes procedures for Notice of Lien and Levy pursuant to Subsections 62A-11-103(4), (14); 62A-11-104(9); 62A-11-304.1(1)(h)(i)(A) and (B), (1)(h)(ii), (1)(h)(iii), (1)(h)(iv), (2), (5)(b); 62A-11-304.5 (1)(b); and Section 62A-11-313.

R527-430-2. Purpose.

The purpose of this rule is to provide procedures for the Office of Recovery Services/Child Support Services (ORS/CSS) to determine the amount that a financial institution or payor should release to an unobligated spouse who jointly owns a financial account, as defined in Subsection 62A-11-103(4), or who is a joint-recipient of a non-means tested lump sum payment, judgment, settlement, or lottery, when ORS/CSS has subjected the account, non-means tested lump sum payment, judgment, settlement, or lottery to a Notice of Lien-Levy, and the unobligated spouse has contested the action.

R527-430-3. Definitions.

1. Terms used in this rule are defined in Sections 62A-11-103, 62A-11-303 and 62A-11-401.

2. In addition,"unobligated spouse" means a spouse and joint-owner of a financial account, joint-recipient of a non-means tested lump sum payment, judgment, settlement, or lottery who is not obligated under the child support order that is the basis for the action.

R527-430-4. Procedures on Joint Financial Accounts, Non-means Tested Lump Sum Payments, Judgments, Settlements, and Lotteries.

The procedures below will apply when an unobligated spouse contests a Notice of Lien-Levy or a Notice of Lien-Levy, Lump Sum Payment upon a joint financial account or payor of a non-means tested payment, judgment, settlement, or lottery.

1. The unobligated spouse must make a written request to ORS/CSS to review the action within 15 days of the date the concurrent notice of lien-levy was sent to the obligor and the unobligated spouse, pursuant to Subsection 62A-11-304.1(5)(a).

2. In cases that involve amounts from financial institutions, the unobligated spouse must provide ORS/CSS with documentation of recent income and/or documentation of the sources of deposits made to the financial account. Examples of income documentation include: copies of tax returns for the prior year with W-2's attached; or, copies of two or more recent pay records. Examples of documentation of deposits to a financial account include: receipts or statements which show the sources of deposits made to the financial institution for the current month and one or more prior months. In cases that involve amounts from a non-means tested lump sum payment, judgment, settlement, or lottery, the unobligated spouse must provide ORS/CSS with documentation of the settlement percentage that each recipient should receive. Examples of payment documentation include: written verification from the insurance company or other payor, a copy of the payment or settlement agreement, and/or a copy of a signed judgment.

3. ORS/CSS will determine the amount that the financial institution should release to the unobligated spouse based upon the proportionate share of the income earned by the unobligated spouse, or the proportionate share of deposits made to the financial account by the unobligated spouse, or a combination of the two methods. In cases that involve amounts from a non-means tested lump sum payment, judgment, settlement, or lottery, ORS/CSS will determine the amount that the payor should release to the unobligated spouse based upon the validity of the documentation provided to ORS/CSS.

4. If it is determined that a portion of the property should be released to the unobligated spouse, ORS/CSS will notify the financial institution or payor pursuant to Subsection 62A-11-304.1(5)(b).

5. Upon receipt of a notice of release from ORS/CSS, the financial institution or payor shall release the property that is specified in the notice of release, but continue to secure the remaining property from unauthorized transfer or disposition until 21 days after the date the original Notice of Lien-Levy was sent, at which time the financial institution or payor shall surrender the remaining property to ORS/CSS pursuant to Subsection 62A-11-304.1(5)(b).

KEY: child support
March 18, 1999 **62A-11-304.1**

R590. Insurance, Administration.
R590-96. Rule to Recognize New Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities.
R590-96-1. Authority.

This rule is promulgated by the Insurance Commissioner pursuant to Sections 31A-2-201, and 31A-17-505.

R590-96-2. Purpose.

The purpose of this rule is to recognize the following mortality tables for use in determining the minimum standard of valuation for annuity and pure endowment contracts: the 1983 Table "a", the 1983 Group Annuity Mortality (1983 GAM) Table, the Annuity 2000 Mortality Table, and the 1994 Group Annuity Reserving (1994 GAR) Table.

R590-96-3. Definitions.

A. As used in this rule 1983 Table "a" means that mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality table for annuities in June 1982 by the National Association of Insurance Commissioners.

B. As used in this rule "1983 GAM Table" means that mortality table developed by the Society of Actuaries Committee on Annuities and adopted as a recognized mortality table for annuities in December 1983 by the National Association of Insurance Commissioners.

C. As used in this rule "1994 GAR Table" means that mortality table developed by the Society of Actuaries Group Annuity Valuation Table Task Force and shown on pages 866-867 of Volume XLVII of the Transactions of the Society of Actuaries, 1995, and adopted as a recognized mortality table for annuities in December 1996 by the National Association of Insurance Commissioners.

D. As used in this rule "Annuity 2000 Mortality Table" means that mortality table developed by the Society of Actuaries Committee on Life Insurance Research and shown on page 240 of Volume XLVII of the Transactions of the Society of Actuaries (1995) and adopted as a recognized mortality table for annuities in December 1996 by the National Association of Insurance Commissioners.

E. The tables identified in R590-96-3.C. and D., are hereby incorporated by reference within this rule and are available for public inspection at the Insurance Department during normal business hours.

R590-96-4. Individual Annuity or Pure Endowment Contracts.

A. Except as provided in Subsections B. and C. of this section, the 1983 Table "a" is recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after April 2, 1980.

B. Except as provided in Subsection C. of this section, either the 1983 Table "a" or the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1985.

C. Except as provided in Subsection D of this section, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1999.

D. The 1983 Table "a" without projection is to be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after July 1, 1999, solely when the contract is based on life contingencies and is issued to fund periodic benefits arising from:

(1) Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;

(2) Settlements involving similar actions such as worker's compensation claims; or

(3) Settlements of long term disability claims where a temporary or life annuity has been used in lieu of continuing disability payments.

R590-96-5. Group Annuity or Pure Endowment Contracts.

A. Except as provided in Subsections B. and C. of this section, the 1983 GAM Table, the 1983 Table "a" and the 1994 GAR Table are recognized and approved as group annuity mortality tables for valuation and, at the option of the company, any one of these tables may be used for purposes of valuation for an annuity or pure endowment purchased on or after April 2, 1980 under a group annuity or pure endowment contract.

B. Except as provided in Subsection C of this section, either the 1983 GAM Table or the 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after July 1, 1985 under a group annuity or pure endowment contract.

C. The 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after July 1, 1999 under a group annuity or pure endowment contract.

R590-96-6. Application of the 1994 GAR Table.

In using the 1994 GAR Table, the mortality rate for a person age x in year (1994 + n) is calculated as follows: $q_x^{1994+n} = q_x^{1994} (1 - AA_x)^n$; where the q_x^{1994} and AA_xs are as specified in the 1994 GAR Table.

R590-96-7. Separability.

If any provision of this rule or its application to any person or circumstances is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances may not be affected by it.

KEY: insurance law
March 16, 1999 31A-2-201
Notice of Continuation October 24, 1997 31A-17-505

R590. Insurance, Administration.
R590-165. Health Benefit Plans.
R590-165-1. Authority.

This rule is issued pursuant to the general rulemaking authority vested in the commissioner by Section 31A-2-201. Section 31A-22-613.5 requires that the commissioner adopt health benefit plans.

R590-165-2. Scope and Purpose.

A. This rule applies to all insurers marketing health insurance policies of any of the following types:

(1) traditional major medical coverage;

(2) preferred provider organization, PPO, coverage; or

(3) health maintenance organization, HMO, coverage.

B. The commissioner has adopted these three types of health care plans, each with a high and a low option. Insurers marketing these types of health insurance policies within the State of Utah are required to quote and offer for sale to the public, at the request of a potential buyer, each of the plans of the same types that the insurer otherwise markets at both the high and low options of those plans.

C. The purpose of this rule is to set standards for these health benefit plans as required by Section 31A-22-613.5. The three types of plans are designed to facilitate price and value comparisons of health insurance disability policies by consumers. An insurer offering the designated benefit plans may also offer plans that provide more or less coverage than the designated benefit plans.

D. If a company markets none of these three types of plans, they are exempt from this rule.

R590-165-3. Definitions.

A. The following definitions shall be used in each of the adopted health care plans:

(1) "Complications of pregnancy" means an illness, distinct from pregnancy, affecting the mother and occurring during pregnancy and requiring separate and specific medical or surgical services for which separate and additional charges are incurred.

(2) Cost Sharing terms.

(a) For the traditional major medical and PPO plans, the terms applicable to amounts payable by insureds for covered services are deductible, coinsurance, and copayment. These terms are to be defined in PPO and major medical plans, in these words or in words of similar meaning, as follows:

(i) "Deductible" is the amount of covered charges incurred during a specific time period payable by the insured before benefits are provided under the plan.

(ii) "Coinsurance" is the insured's cost-sharing amount expressed as a percentage of covered charges.

(iii) "Copayment" is the insured's cost-sharing amount expressed as a fixed dollar amount payable by the insured each time a specified covered service is received.

(b) For the HMO plan, the term applicable to amounts payable by insureds for covered services is "copayment." This term is used for both percentage amounts and fixed dollar amounts payable by the insured. The term may be defined in the insurer's HMO plan.

(3) "Custodial care" means:

(a) institutional care, consisting mainly of room and board, which is for the primary purpose of controlling the covered person's environment; and

(b) professional or personal care, consisting mainly of non-skilled nursing services with or without medical supervision, which is for the primary purpose of managing the covered person's disability or maintaining the covered person's degree of recovery already attained without reasonable expectation of significant further recovery.

(4) "Investigative/experimental technology" means treatment, procedure, facility, equipment, drug, device or supply, "technology", which does not, as determined by the company on a case by case basis, meet all of the following criteria:

(a) The technology must have final approval from all appropriate governmental regulatory bodies, if applicable.

(b) The technology must be available in significant number outside the clinical trial or research setting.

(c) The available research regarding the technology must be substantial. For purposes of this definition, "substantial" means sufficient to allow the company to conclude that:

(i) the technology is both medically necessary and appropriate for the covered person's treatment;

(ii) the technology is safe and efficacious; and

(iii) more likely than not, the technology will be beneficial to the covered person's health.

(d) The technology must be generally recognized as appropriate by the regional medical community as a whole.

R590-165-4. General Requirements.

A. Each insurer may use its own language to present covered services, limitations and exclusions, however, these same services must be covered, limited or excluded by all plans.

B. Each plan must contain a description of the basis for its payments and a statement relative to whether the consumer will be required to pay amounts in excess of the insurer's allowable charges, usual and customary charges, fee schedule amounts, etc.

C. Each insurer's plan must contain a statement relative to whether providers are employed by the insurer or under contract with the insurer and, if so, whether the consumer will be required to pay the full amount or a different amount for services by providers not employed or under contract.

D. Each insurer is to include its usual contracting provisions in its plan: submission of claims, coordination of benefits, eligibility and coverage termination, grievance procedures, general terms and conditions, etc.

E. Each insurer may apply its own "takeover" criteria on group business.

F. If an insurer does not offer an HMO plan, a PPO plan, or a traditional major medical plan, the insurer is not required to offer the designated plan of that type. If the insurer does not offer coverage to either groups or individuals, the insurer is not required to offer the designated plan or plans for any group or individual, respectively.

G. Samples of these three plans; "Designated Health Benefit Plan Revision Traditional Major Medical Coverage" effective 1-12-99, "Designated Health Benefit Plan Revision to Preferred Provider Organization Coverage" effective 1-12-99,

and "Designated Health Benefit Plan Revision to Health Maintenance Organization Coverage" effective 1-12-99, with their high and low options. These plans are incorporated herein and may be obtained from the Insurance Department. They are to be followed taking into consideration the guidelines of this rule.

H. Forms are to be filed with the department before use.

R590-165-5. Compliance.

A. Insurers within the scope of this rule will be required, at the request of a potential buyer, to quote and offer for sale at least one of the proposed plans, 180 days after the effective date of this rule.

B. Insurers will also be required to adopt any changes made to the plans 180 days after being notified of those changes by the commissioner.

R590-165-6. Severability.

If a provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of these provisions may not be affected.

KEY: insurance
March 16, 1999 **31A-2-201**
31A-22-613.5

R590. Insurance, Administration.
R590-167. Individual and Small Employer Health Insurance Rule.
R590-167-1. Statement of Purpose and Authority.

This rule is intended to implement the provisions of Chapter 30, Title 31A, Utah Code Annotated, the Individual and Small Employer Health Insurance Act, referred to in this rule as the Act. The commissioner's authority to enforce this rule is provided under Subsections 31A-2-201(1), 31A-2-201(3)(a) and 31A-30-106(1)(k). The general purposes of the Act and this rule are to enhance the availability of health insurance coverage to individuals and small employers; to regulate and prevent abuse in insurer rating practices and establish limits on differences in rates between health benefit plans; to ensure renewability of coverage; to establish limitations on the use of preexisting condition exclusions; to provide for portability; and to improve the overall fairness and efficiency of the individual and small employer health insurance market.

The Act and this rule are intended to promote broader spreading of risk in the individual and small employer marketplace. The Act and rule are intended to regulate rating practices for all health benefit plans sold to individuals and small employers, whether sold directly or through associations or other groupings of individuals and small employers. Carriers that provide health benefit plans to individuals and small employers are intended to be subject to all of the provisions of this rule.

R590-167-2. Definitions.

As used in this rule:

A. "Associate member of an employee organization" means any individual who participates in an employee benefit plan, as defined in 29 U.S.C. Section 1002(1), that is a multi-employer plan, as defined in 29 U.S.C. Section 1002(37A), other than the following:

(1) an individual, or the beneficiary of such individual, who is employed by a participating employer within a bargaining unit covered by at least one of the collective bargaining agreements under or pursuant to which the employee benefit plan is established or maintained; or

(2) an individual who is a present or former employee, or a beneficiary of such employee, of the sponsoring employee organization, of an employer who is or was a party to at least one of the collective bargaining agreements under or pursuant to which the employee benefit plan is established or maintained, or of the employee benefit plan, or of a related plan.

B. "New entrant" means an eligible employee, or the dependent of an eligible employee, who becomes part of an employer group after the initial period for enrollment in a health benefit plan.

C. "Risk characteristic" means the health status, claims experience, duration of coverage, or any similar characteristic related to the health status or experience of an individual, a small employer group or of any member of a small employer group.

D. "Risk load" means the percentage above the applicable base premium rate that is charged by a covered carrier to a covered insured to reflect the risk characteristics of the covered individuals.

E. Other terms retain the definitions in 31A-30-103.

R590-167-3. Applicability and Scope.

A. This rule shall apply to any health benefit plan which:

(1) meets one or more of the conditions set forth in 31A-30-104(1);

(2) provides coverage to a covered insured located in this state, without regard to whether the policy or certificate was issued in this state; and

(3) is in effect on or after the effective date of this rule.

B. The provisions of this rule shall apply to a health benefit plan provided to an individual, a small employer or to the employees of a small employer without regard to whether the health benefit plan is offered under or provided through a group policy or trust arrangement of any size sponsored by an association or discretionary group.

C.(1)(a) If a small employer has employees in more than one state, the provisions of the Act and this rule shall apply to a health benefit plan issued to the small employer if:

(i) the majority of eligible employees of such small employer are employed in this state; or

(ii) if no state contains a majority of the eligible employees of the small employer, the primary business location of the small employer is in this state.

(b) In determining whether the laws of this state or another state apply to a health benefit plan issued to a small employer described in Subparagraph (a), the provisions of the paragraph shall be applied as of the date the health benefit plan was issued to the small employer for the period that the health benefit plan remains in effect.

(2) If a health benefit plan is subject to the Act and this rule, the provisions of the Act and this rule shall apply to all individuals covered under the health benefit plan, whether they reside in this state or in another state.

D. A carrier that is not operating as a covered carrier in this state may not become subject to the provisions of the Act and this rule solely because an individual or a small employer that was issued a health benefit plan in another state by that carrier moves to this state.

R590-167-4. Establishment of Classes of Business.

A. A covered carrier that establishes more than one class of business pursuant to the provisions of 31A-30-105 shall maintain on file for inspection by the commissioner the following information with respect to each class of business so established:

(1) a description of each criterion employed by the carrier, or any of its agents, for determining membership in the class of business;

(2) a statement describing the justification for establishing the class as a separate class of business and documentation that the establishment of the class of business is intended to reflect substantial differences in expected claims experience or administrative costs related to the reasons set forth in 31A-30-105; and

(3) a statement disclosing which, if any, health benefit plans are currently available for purchase in the class and any significant limitations related to the purchase of such plans.

B. A carrier may not directly or indirectly use group size

as a criterion for establishing eligibility for a class of business.

R590-167-5. Transition for Assumptions of Business from Another Carrier.

A.(1) A covered carrier may not transfer or assume the entire insurance obligation and/or risk of a health benefit plan covering an individual or a small employer in this state unless:

(a) the transaction has been approved by the commissioner of the state of domicile of the assuming carrier;

(b) the transaction has been approved by the commissioner of the state of domicile of the ceding carrier; and

(c) the transaction otherwise meets the requirements of this section.

(2) A carrier domiciled in this state that proposes to assume or cede the entire insurance obligation and/or risk of one or more health benefit plans covering covered individuals from or to another carrier shall make a filing for approval with the commissioner at least 60 days prior to the date of the proposed assumption. The commissioner may approve the transaction, if the commissioner finds that the transaction is in the best interests of the individuals insured under the health benefit plans to be transferred and is consistent with the purposes of the Act and this rule. The commissioner may not approve the transaction until at least 30 days after the date of the filing; except that, if the carrier is in hazardous financial condition, the commissioner may approve the transaction as soon as the commissioner deems reasonable after the filing.

(3)(a) The filing required under Subsection (A)(2) shall:

(i) describe the class of business, including any eligibility requirements, of the ceding carrier from which the health benefit plans will be ceded;

(ii) describe whether the assuming carrier will maintain the assumed health benefit plans as a separate class of business, pursuant to Subsection C, or will incorporate them into an existing class of business, pursuant to Subsection D. If the assumed health benefit plans will be incorporated into an existing class of business, the filing shall describe the class of business of the assuming carrier into which the health benefit plans will be incorporated;

(iii) describe whether the health benefit plans being assumed are currently available for purchase by individuals or small employers;

(iv) describe the potential effect of the assumption, if any, on the benefits provided by the health benefit plans to be assumed;

(v) describe the potential effect of the assumption, if any, on the premiums for the health benefit plans to be assumed;

(vi) describe any other potential material effects of the assumption on the coverage provided to the individuals and small employers covered by the health benefit plans to be assumed; and

(vii) include any other information required by the commissioner.

(b) A covered carrier required to make a filing under Subsection (A)(2) shall also make an informational filing with the commissioner of each state in which there are individual or small employer health benefit plans that would be included in the transaction. The informational filing to each state shall be made concurrently with the filing made under Subsection (A)(2) and shall include at least the information specified in Subparagraph (a) for the individual or small employer health benefit plans in that state.

(4) A covered carrier may not transfer or assume the entire insurance obligation and/or risk of a health benefit plan covering an individual or a small employer in this state unless it complies with the following provisions:

(a) The carrier has provided notice to the commissioner at least 60 days prior to the date of the proposed assumption. The notice shall contain the information specified in Subsection (A)(3) for the health benefit plans covering individuals and small employers in this state.

(b) If the assumption of a class of business would result in the assuming covered carrier being out of compliance with the limitations related to premium rates contained in 31A-30-106, the assuming carrier shall make a filing with the commissioner pursuant to 31A-30-105(3) seeking an extended transition period.

(c) An assuming carrier seeking an extended transition period may not complete the assumption of health benefit plans covering individuals or small employers in this state unless the commissioner grants the extended transition period requested pursuant to Subparagraph (b).

(d) Unless a different period is approved by the commissioner, an extended transition period shall, with respect to an assumed class of business, be for no more than 15 months and, with respect to each individual small employer, shall last only until the anniversary date of such employer's coverage, except that the period with respect to an individual small employer may be extended beyond its first anniversary date for a period of up to twelve (12) months if the anniversary date occurs within three (3) months of the date of assumption of the class of business.

B.(1) Except as provided in Subsection (B)(2), a covered carrier may not cede or assume the entire insurance obligation and/or risk for an individual or small employer health benefit plan unless the transaction includes the ceding to the assuming carrier of the entire class of business which includes such health benefit plan.

(2) A covered carrier may cede less than an entire class of business to an assuming carrier if:

(a) one or more individuals or small employers in the class have exercised their right under contract or state law to reject, either directly or by implication, the ceding of their health benefit plans to another carrier. In that instance, the transaction shall include each health benefit plan in the class of business except those health benefit plans for which an individual or a small employer has rejected the proposed cession; or

(b) after a written request from the transferring carrier, the commissioner determines that the transfer of less than the entire class of business is in the best interests of the individual or small employers insured in that class of business.

C. Except as provided in Subsection D, a covered carrier that assumes one or more health benefit plans from another carrier shall maintain such health benefit plans as a separate class of business.

D. A covered carrier that assumes one or more health benefit plans from another carrier may exceed the limitation contained in 31A-30-105 relating to the maximum number of

classes of business a carrier may establish, due solely to such assumption for a period of up to 15 months after the date of the assumption, provided that the carrier complies with the following provisions:

(1) Upon assumption of the health benefit plans, such health benefit plans shall be maintained as a separate class of business. During the fifteen-month period following the assumption, each of the assumed individual or small employer health benefit plans shall be transferred by the assuming covered carrier into a single class of business operated by the assuming covered carrier. The assuming covered carrier shall select the class of business into which the assumed health benefit plans will be transferred in a manner such that the transfer results in the least possible change to the benefits and rating method of the assumed health benefit plans.

(2) The transfers authorized in Subsection (D)(1) shall occur with respect to each individual or small employer on the anniversary date of the individual's or small employer's coverage, except that the period with respect to an individual small employer may be extended beyond its first anniversary date for a period of up to 12 months if the anniversary date occurs within three (3) months of the date of assumption of the class of business.

(3) A covered carrier making a transfer pursuant to Subsection (D)(1) may alter the benefits of the assumed health benefit plans to conform to the benefits currently offered by the carrier in the class of business into which the health benefit plans have been transferred.

(4) The premium rate for an assumed individual or small employer health benefit plan may not be modified by the assuming covered carrier until the health benefit plan is transferred pursuant to Subsection (D)(1). Upon transfer, the assuming covered carrier shall calculate a new premium rate for the health benefit plan from the rate manual established for the class of business into which the health benefit plan is transferred. In making such calculation, the risk load applied to the health benefit plan shall be no higher than the risk load applicable to such health benefit plan prior to the assumption.

(5) During the 15 month period provided in this subsection, the transfer of individual or small employer health benefit plans from the assumed class of business in accordance with this subsection may not be considered a violation of the first sentence of 31A-30-106(2).

E. An assuming carrier may not apply eligibility requirements, including minimum participation and contribution requirements, with respect to an assumed health benefit plan, or with respect to any health benefit plan subsequently offered to an individual or small employer covered by such an assumed health benefit plan, that are more stringent than the requirements applicable to such health benefit plan prior to the assumption.

F. The commissioner may approve a longer period of transition upon application of a covered carrier. The application shall be made within 60 days after the date of assumption of the class of business and shall clearly state the justification for a longer transition period.

G. Nothing in this section or in the Act is intended to:

(1) reduce or diminish any legal or contractual obligation or requirement, including any obligation provided in 31A-14-213, of the ceding or assuming carrier related to the transaction;

(2) authorize a carrier that is not admitted to transact the business of insurance in this state to offer or insure health benefit plans in this state; or

(3) reduce or diminish the protections related to an assumption reinsurance transaction provided in 31A-14-213 or otherwise provided by law.

R590-167-6. Restrictions Relating to Premium Rates.

A.(1) A covered carrier shall develop a separate rate manual for each class of business. Base premium rates and new business premium rates charged to individuals and small employers by the covered carrier shall be computed solely from the applicable rate manual developed pursuant to this subsection. To the extent that a portion of the premium rates charged by a covered carrier is based on the carrier's discretion, the manual shall specify the criteria and factors considered by the carrier in exercising such discretion.

(2)(a) A covered carrier may not modify the rating method used in the rate manual for a class of business until the change has been approved as provided in this paragraph. The commissioner may approve a change to a rating method if the commissioner finds that the change is reasonable, actuarially appropriate, and consistent with the purposes of the Act and this rule.

(b) A carrier may modify the rating method for a class of business only after filing an actuarial certification. The filing shall contain at least the following information:

(i) the reasons the change in rating method is being requested;

(ii) a complete description of each of the proposed modifications to the rating method;

(iii) a description of how the change in rating method would affect the premium rates currently charged to individuals and small employers in the class of business, including an estimate from a qualified actuary of the number of groups or individuals, and a description of the types of groups or individuals, whose premium rates may change by more than 10% due to the proposed change in rating method, not including general increases in premium rates applicable to all individuals and small employers in a health benefit plan;

(iv) a certification from a qualified actuary that the new rating method would be based on objective and credible data and would be actuarially sound and appropriate; and

(v) a certification from a qualified actuary that the proposed change in rating method would not produce premium rates for individuals and small employers that would be in violation of Section 31A-30-106.

(c) For the purpose of this section a change in rating method shall mean:

(i) a change in the number of case characteristics used by a covered carrier to determine premium rates for health benefit plans in a class of business;

(ii) change in the manner or procedures by which insureds are assigned into categories for the purpose of applying a case characteristic to determine premium rates for health benefit plans in a class of business;

(iii) change in the method of allocating expenses among health benefit plans in a class of business; or

(iv) change in a rating factor with respect to any case

characteristic if the change would produce a change in premium for any individual or small employer that exceeds 10%.

A change in a rating factor shall mean the cumulative change with respect to such factor considered over a 12 month period. If a covered carrier changes rating factors with respect to more than one case characteristic in a 12 month period, the carrier shall consider the cumulative effect of all such changes in applying the 10% test.

B.(1) The rate manual developed pursuant to Subsection A shall specify the case characteristics and rate factors to be applied by the covered carrier in establishing premium rates for the class of business.

(2) A covered carrier may not use case characteristics other than those specified in 31A-30-106(1)(j) without the prior approval of the commissioner. A covered carrier seeking such an approval shall make a filing with the commissioner for a change in rating method under Subsection A(2).

(3) A covered carrier shall use the same case characteristics in establishing premium rates for each health benefit plan in a class of business and shall apply them in the same manner in establishing premium rates for each such health benefit plan. Case characteristics shall be applied without regard to the risk characteristics of an individual or small employer.

(4) The rate manual developed pursuant to Subsection A shall clearly illustrate the relationship among the base premium rates charged for each health benefit plan in the class of business. If the new business premium rate is different than the base premium rate for a health benefit plan, the rate manual shall illustrate the difference.

(5) Differences among base premium rates for health benefit plans shall be based solely on the reasonable and objective differences in the design and benefits of the health benefit plans and may not be based in any way on the nature of the small employer groups that choose or are expected to choose a particular health benefit plan. A covered carrier shall apply case characteristics and rate factors within a class of business in a manner that assures that premium differences among health benefit plans for identical individuals or small employer groups vary only due to reasonable and objective differences in the design and benefits of the health benefit plans and are not due to the nature of the individuals or small employer groups that choose or are expected to choose a particular health benefit plan.

(6) The rate manual developed pursuant to Subsection A shall provide for premium rates to be developed in a two step process. In the first step, a base premium rate shall be developed for the individual or small employer group without regard to any risk characteristics of the group. In the second step, the resulting base premium rate may be adjusted by a risk load, subject to the provisions of 31A-30-106, to reflect the risk characteristics of the group.

(7)(a) Except as provided in Subparagraph (b), a premium charged to an individual or small employer for a health benefit plan may not include a separate application fee, underwriting fee, or any other separate fee or charge.

(b) A carrier may charge a separate fee with respect a health benefit plan, but only one fee with respect to such plan, provided the fee is no more than $5 per month per employee and is applied in a uniform manner to each health benefit plan in a class of business.

(8) Each rate manual developed pursuant to Subsection A shall be maintained by the carrier for a period of six years. Updates and changes to the manual shall be maintained with the manual.

C. If group size is used as a case characteristic by a covered carrier, the highest rate factor associated with a group size classification may not exceed the lowest rate factor associated with such a classification by more than 20% without prior approval of the commissioner.

D. The restrictions related to changes in premium rates in 31A-30-106(1)(c) and 31A-30-106(1)(h) shall be applied as follows:

(1) A covered carrier shall revise its rate manual each rating period to reflect changes in base premium rates and changes in new business premium rates.

(2)(a) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate is less than or the same as the percentage change in the base premium rate, the change in the new business premium rate shall be deemed to be the change in the base premium rate for the purposes of 31A-30-106(1)(c) and 31A-30-106(1)(h).

(b) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate exceeds the percentage change in the base premium rate, the health benefit plan shall be considered a health benefit plan into which the covered carrier is no longer enrolling new individuals or small employers for the purposes of 31A-30-106(1)(c) and 31A-30-106(1)(h).

(3) If, for any rating period, the change in the new business premium rate for a health benefit plan differs from the change in the new business premium rate for any other health benefit plan in the same class of business by more than 20%, the carrier shall make a filing with the commissioner containing a complete explanation of how the respective changes in new business premium rates were established and the reason for the difference. The filing shall be made 30 days before the beginning of the rating period.

(4) A covered carrier shall keep on file for a period of at least six years the calculations used to determine the change in base premium rates and new business premium rates for each health benefit plan for each rating period.

E.(1) Except as provided in Subsections (E)(2) through (4), a change in premium rate for an individual or small employer shall produce a revised premium rate that is no more than the following:

(a) the base premium rate for the individual or small employer, as shown in the rate manual as revised for the rating period, multiplied by:

(b) one plus the sum of:

(i) the risk load applicable to the individual or small employer during the previous rating period; and

(ii) 15% prorated for periods of less than one year.

(2) In the case of a health benefit plan into which a covered carrier is no longer enrolling new individuals or small employers, a change in premium rate for an individual or small employer shall produce a revised premium rate that is no more than the following:

(a) the base premium rate for the individual or small employer, given its present composition and as shown in the rate manual in effect for the individual or small employer at the beginning of the previous rating period, multiplied by:

(b) one plus the lesser of:

(i) the change in the base rate; or

(ii) the percentage change in the new business premium for the most similar health benefit plan into which the covered carrier is enrolling new individuals or small employers, multiplied by:

(c) one plus the sum of:

(i) the risk load applicable to the individual or small employer during the previous rating period; and

(ii) 15%, prorated for periods of less than one year.

(3) In the case of a health benefit plan described in 31A-30-106(1)(f), if the current premium rate for the health benefit plan exceeds the ranges set forth in 31A-30-106(1), the formulae set forth in Subsections (E)(1) and (2) will be applied as if the 15% adjustment provided in Subsection (E)(1)(b) and Subsection (E)(2) were a 0% adjustment.

(4) Notwithstanding the provisions of Subsections (E)(1) and (2), a change in premium rate for an individual or small employer may not produce a revised premium rate that would exceed the limitations on rates provided in 31A-30-106(1)(b).

F.(1) A representative of a Taft Hartley trust, including a carrier upon the written request of such a trust, may file in writing with the commissioner a request for the waiver of application of the provisions of 31A-30-106(1) with respect to such trust.

(2) A request made under Subsection (F)(1) shall identify the provisions for which the trust is seeking the waiver and shall describe, with respect to each provision, the extent to which application of such provision would:

(a) adversely affect the participants and beneficiaries of the trust; and

(b) require modifications to one or more of the collective bargaining agreements under or pursuant to which the trust was or is established or maintained.

(3) A waiver granted under 31A-30-104(3) may not apply to an individual who participates in the trust because the individual is an associate member of an employee organization or the beneficiary of such an individual.

R590-167-7. Application to Reenter State.

A. A carrier that has been prohibited from writing coverage for individuals or small employers in this state pursuant to 31A-30-107(2) may not resume offering health benefit plans to individuals or small employers in this state until the carrier has made a petition to the commissioner to be reinstated as a covered carrier and the petition has been approved by the commissioner. In reviewing a petition, the commissioner may ask for such information and assurances as the commissioner finds reasonable and appropriate.

B. In the case of a covered carrier doing business in only one established geographic service area of the state, if the covered carrier elects to nonrenew a health benefit plan under 31A-30-107(1)(f), the covered carrier shall be prohibited from offering health benefit plans to individuals or small employers in any part of the service area for a period of five years. In addition, the covered carrier may not offer health benefit plans to individuals or small employers in any other geographic area of the state without the prior approval of the commissioner. In considering whether to grant approval, the commissioner may ask for such information and assurances as the commissioner finds reasonable and appropriate.

R590-167-8. Qualifying Previous Coverages.

A covered carrier shall not deny, exclude, or limit benefits because of a preexisting condition without first ascertaining the existence and source of previous coverage. The covered carrier shall have the responsibility to contact the source of such previous coverage to resolve any questions about the benefits or limitations related to such previous coverage. Previous coverage may be coverage that continues after the issuance of the new health benefit plan. The previous carrier shall fully cooperate in furnishing the needed information required by this section.

R590-167-9. Restrictive Riders.

A restrictive rider, endorsement or other provision that would violate the provisions of 31A-30-107(4) and that was in force on the effective date of this rule may not remain in force beyond the first anniversary date of the health benefit plan subject to the restrictive provision that follows the effective date of this rule. A covered carrier shall provide written notice to those individuals or small employers whose coverage will be changed pursuant to this section at least 30 days prior to the required change.

R590-167-10. Status of Carriers as Covered Carriers.

A. Prior to marketing a health benefit plan, a carrier shall make a filing with the commissioner indicating whether the carrier intends to operate as a covered carrier in this state under the terms of the Act and of this rule. Such filing will indicate if the covered carrier intends to market to individuals, small employers or both.

B. Subject to Subsection C, a carrier may not offer health benefit plans to individuals and small employers, or continue to provide coverage under health benefit plans previously issued to individuals and small employers in this state, unless the filing provided pursuant to Subsection A indicates that the carrier intends to operate as a covered carrier in this state.

C. If the filing made pursuant Subsection A indicates that a carrier does not intend to operate as a covered carrier in this state, the carrier may continue to provide coverage under health benefit plans previously issued to individuals and small employers in this state only if the carrier complies with the following provisions:

(1) the carrier complies with the requirements of the Act with respect to each of the health benefit plans previously issued to individuals and small employers by the carrier;

(2) the carrier provides coverage to each new entrant to a health benefit plan previously issued to an individual or small employer by the carrier; and

(3) the carrier complies with the requirements of 31A-30-106(1)(k)(iii) and Sections 9 and 12 of this rule as they apply to individuals and small employers whose coverage has been terminated by the carrier and to individuals and small employers

whose coverage has been limited or restricted by the carrier.

D. If the filing made pursuant Subsection A indicates that a carrier does not intend to operate as a covered carrier in this state, the carrier shall be precluded from operating as a covered carrier in this state, except as provided for in Subsection C, for a period of five years from the date of the filing. Upon a written request from such a carrier, the commissioner may reduce the period provided for in the previous sentence if the commissioner finds that permitting the carrier to operate as a covered carrier would be in the best interests of the individuals and small employers in the state.

R590-167-11. Actuarial Certification and Additional Filing Requirements.

A. The actuarial certification shall meet the following requirements:

(1) The actuarial certification shall be a written statement that meets the requirements of 31A-30, R590-167, and the Actuarial Standards Board including the provisions of Interpretative Opinion 3: Professional Communications of Actuaries regarding Actuarial Reports.

(2) The actuary must state that he or she meets the qualifications of 31A-30-103(1).

(3) The actuarial certification shall contain the following statement: "I, (name), certify that (name of covered carrier) is in compliance with the provisions of Section 31A-30-106, based upon the examination of (name of covered carrier), including review of the appropriate records and of the actuarial assumptions and methods utilized by (name of covered carrier) in establishing premium rates for applicable health benefit plans."

(4) The actuarial certification shall list and describe each written demonstration used by the actuary to establish compliance with Title 31A Chapter 30 and R590-167.

(5) The information described in Subsection A shall be filed no later than March 15 of each year.

B. For every health benefit plan subject to this rule, the carrier shall file with the commissioner the following:

(1) a copy of the applicable rating manual, which includes a complete and detailed description of how the final premium, including any fees, is calculated from the rating manual. This description shall include both new business and renewal rates; and

(2) all changes and updates, which includes a complete and detailed description of how the final premium, including any fees, is calculated from the rating manual. This description shall include both new business and renewal rates.

(3) The information described in Subsection B shall be filed 30 days prior to use.

C. The carrier shall file with the commissioner the following:

(1) a list of every policy form to which the rule applies, that includes a description of how to find the applicable information in Subsection (B)(1) and (2) for each policy form.

(2) The information described in Subsection C shall be filed no later than March 15 of each year.

D. A covered carrier shall file annually the following information with the commissioner related to health benefit plans issued by the covered carrier to individuals or small employers in this state:

(1) the number of individuals and small employers that were issued health benefit plans in the previous calendar year, separated as to newly issued plans and renewals;

(2) the number of individuals and small employers that were not issued due to underwriting rules;

(3) the number of individual and small employer health benefit plans in force in each zip code of the state as of December 31 of the previous calendar year;

(4) the number of individual and small employer health benefit plans that were voluntarily not renewed by individuals and small employers in the previous calendar year, including termination for non-payment of the required premium;

(5) the number of individual market health benefit plans and small employer market health benefit plans terminated or nonrenewed, for reasons other than nonpayment of premium, by the carrier in the previous calendar year categorized as:

(a) fraud or misrepresentation of the employer or insureds;

(b) noncompliance with the carrier's minimum participation requirements;

(c) noncompliance with the carrier's employer contribution requirements;

(d) misuse of a provider network provision; or

(e) election to nonrenew all health benefit plans issued to individuals and small employers in this state.

(6) The number of individual and small employer health benefit plans that were issued to individuals and small employers that were uninsured for at least the three months prior to issue.

(7) Total number of natural covered lives, including the insured, spouse and dependents, for individual market health benefit plans and small employer market health benefit plans as of December 31 of the previous calendar year.

(8) The information described in Subsection D. shall be filed no later than March 15 of each year in the format provided in Appendix I, Statistical Report, published 1-12-99. This appendix is available at the Insurance Department and is incorporated herein.

E. A covered carrier shall file by August 15 of each year, the total number of natural covered lives, including the insured, spouse and dependents, for individual market health benefit plans and small employer market health benefit plans as of June 30 of the current calendar year.

R590-167-12. Severability.

A. If any provision of this rule or the application of it to any person or circumstance is, for any reason, held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances will not be affected by the invalid provision.

KEY: insurance
March 11, 1999 **31A-30-106**

R590. Insurance, Administration.
R590-170. Fiduciary and Trust Account Obligations.
R590-170-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to the authority granted under Subsection 31A-2-201(3) to adopt rules for the implementation of the Utah Insurance Code and under Subsections 31A-23-312(2)(c) and 31A-25-305(1) authorizing the commissioner to establish by rule, records to be kept by licensees.

R590-170-2. Purpose and Scope.

(1) The purpose of this rule is to set minimum standards that shall be followed for fiduciary and trust account obligations pursuant to Section 31A-23-310. This rule replaces Rule R590-135 "Accounting Records Rule," Bulletin 88-3 "Fiduciary Responsibilities," and Bulletin 90-7 "Company Reporting."

(2) This rule applies to all licensees holding funds in a fiduciary capacity.

R590-170-3. Definitions.

For the purposes of this rule the commissioner adopts the definitions as set forth in Section 31A-l-301 and the following:

(1) "Trust Account" means a checking or savings account where funds are held in a fiduciary capacity.

(2) "Accounts Receivable" means those premiums invoiced by a licensee and to be collected for an insurer.

(3) Accounts Payable" means the premium due insurers that a licensee is responsible for invoicing and collecting from insureds on behalf of insurers.

R590-170-4. Establishing the Trust Account.

(1) All records relating to a trust account shall be identified with the wording "Trust Account" or words of similar import. These records include checks, bank statements, general ledgers and records retained by the bank pertaining to the trust account.

(2) All trust accounts shall be established with a Federal Employer Identification Number rather than a Social Security Number.

(3) A trust account shall be separate and distinct from operating and personal accounts, i.e., a separate account number, a separate account register, and different checks, deposit and withdrawal slips.

R590-170-5. Maintaining the Trust Account.

(1) Funds deposited into a trust account shall only include: premiums which may include commissions; return premiums; fees paid with premiums; financed premiums; funds held pursuant to a third party administrator contract; funds deposited with a title insurance agent in connection with any escrow settlement or closing, amounts necessary to cover bank charges on the trust account; and interest on the trust account, except as provided under Section 31A-23-307(2)(b).

(2) Disbursements from a trust account shall only include: premiums paid to insurers; return premiums to policyholders; transfer of commissions and fees; funds paid pursuant to a third party administrator contract; funds disbursed by a title insurance agent in connection with any escrow settlement or closing; and the transfer of accrued interest.

(3) Personal or business expenses may not be paid from a trust account, even if sufficient commissions exist in the account to cover these expenses.

(4) Commissions may not be disbursed from a trust account prior to the beginning of the policy period for which the premium has been collected.

(5) Commissions attributed to premiums and fees collected must be disbursed from a trust account on a date not later than the first business day of the calendar quarter after the end of the policy period for which the funds were collected.

(6) Premiums due insurers may not be paid from a trust account unless the premiums directly relating to the amount due have been deposited into, and are being held in, the trust account, or unless funds have been retained in the trust account consistent with Subsection 5 above, or placed by a licensee into the trust account to finance premiums on behalf of insureds.

(7) Premiums financed by a licensee must be accounted for as a loan with interest charged at no less than the statutory rate for any loan exceeding 90 days, pursuant to Section 31A-23-304.

R590-170-6. Accounting Records to be Maintained.

(1) Bank statements for trust accounts must be reconciled monthly.

(2) An accounts receivable report showing credits and debits must be maintained and reconciled monthly. This report must list, at a minimum, the account name and the amount and date due for each receivable. The sum of all receivables must be shown on the report. Receivables that are over 90 days old and their sums must be shown separately on the report.

(3) An accounts payable report showing the status of each account must be maintained and reconciled monthly.

(4) Adequate records shall be maintained to establish ownership of all funds in the trust account, from whom they were received and for whom they are held.

(5) All other accounting records relating to the business of insurance must be maintained in a manner that facilitates an audit.

R590-170-7. Insurer Responsibility.

Insurers and their managing general agents shall provide a written report to the insurance commissioner within 15 days of either of the following:

(1) If an agent or broker fails to pay an account payable within 30 days of the due date. This does not apply where a legitimate dispute exists regarding the account payable if the agent or broker has properly notified the insurer of any disputed items and has provided documentation supporting that position; or

(2) If an agent or broker issues a check that when presented at the bank is not honored or is returned because of insufficient funds.

R590-170-8. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid such invalidity will not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be

severable.

KEY: insurance
March 18, 1999 **31A-2-201**
31A-23-312
31A-25-305

R590. Insurance, Administration.
R590-175. Basic Health Care Plan Rule.
R590-175-1. Authority.

This rule is issued pursuant to the general rulemaking authority vested in the commissioner by Section 31A-2-201. Section 31A-22-613.5(8) requires that the commissioner adopt a Basic Health Care Plan.

R590-175-2. Statement of Purpose and Scope.

The purpose of the rule is to set standards for the Basic Health Care Plan which will be offered under the open enrollment provisions of Chapter 30. The commissioner has adopted the Basic Health Care Plan pursuant to Subsection 31A-22-613.5(8) to be offered under those provisions. This rule applies to all insurers marketing health insurance policies subject to the open enrollment provisions of Chapter 30.

R590-175-3. General Requirements.

A. Each insurer who is required to offer a health care plan under the open enrollment provisions of Chapter 30 shall file with the department at least one health plan which is specified by the insurer as complying with the provisions of this rule and which must be offered for sale to anyone qualifying for open enrollment under Chapter 30.

B. The specified plan may offer additional services or provide a greater level of benefits than the Basic Health Care Plan. However, the specified plan must contain at least those benefits set forth in the Basic Health Care Plan.

C. The specified plan shall not be designed or marketed in a manner which may tend to discourage its purchase by anyone purchasing under the open enrollment provisions of Chapter 30.

D. A plan having actuarial equivalence may be considered, at the sole discretion of the commissioner.

E. Each insurer may use its own language to present covered services, limitations and exclusions; however, any plan offered in compliance with the open enrollment provisions of Chapter 30 must contain at least the benefits set forth in the Basic Health Care Plan as adopted by the commissioner. The specified plan is to be offered as a package, in its entirety, and is mutually exclusive of and not comparable on a line by line basis to a carrier's other plans.

F. When the specified plan is offered by a preferred provider organization, PPO, the benefit levels shown in the Basic Health Care Plan are for contracting providers; benefit levels for non-contracting providers' services may be reduced in accordance with Section 31A-22-617.

G. Each insurer is to include its usual contracting provisions in its specified plan including submission of claims, coordination of benefits, eligibility and coverage termination, grievance procedures general terms and conditions, etc.

H. The Basic Health Care Plan may be obtained from the Insurance Department.

I. The specified plan is to be filed with the department before use.

J. Conversion coverage provided pursuant to Section 31A-22-708, may provide additional benefits in addition to the Basic Health Care Plan.

R590-175-4. Severability.

If a provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of these provisions shall not be affected.

KEY: insurance
March 11, 1999 **31A-22-613.5**

R590. Insurance, Administration.
R590-194. Coverage of Dietary Products for Inborn Errors of Amino Acid or Urea Cycle Metabolism.
R590-194-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. The authority to set minimum standards by rule for coverage of dietary products for inborn errors of amino acid or urea cycle metabolism is provided by Subsection 31A-22-623(2).

R590-194-2. Purpose.

The purpose of this rule is to establish minimum standards of coverage for dietary products used for the treatment of inborn errors of amino acid or urea cycle metabolism at levels consistent with the major medical benefit provided under a disability insurance policy. This entails the identification of a uniform billing code standard to be used by health insurers for the processing of claims covering dietary products in conjunction with the treatment of these specific inborn metabolic errors.

R590-194-3. Definitions.

For purposes of this rule the commissioner adopts the definitions as particularly set forth in Section 31A-1-301 and Subsection 31A-22-623(1).

R590-194-4. Applicability and Scope.

(1) This rule applies to all disability insurance policies sold in Utah.

(2) This rules does not prohibit an insurer from requesting additional information required to determine eligibility of the claim under the terms of the policy, certificate or both, as issued to the claimant.

R590-194-5. Minimum Standards and General Provisions.

(1) Each claim for coverage of dietary products for the treatment of inborn errors of amino acid or urea cycle metabolism requires a prescription by a physician that specifies the quantity prescribed and duration of the prescription.

(2) The products prescribed must be the major source of nutrition for the patient.

(3) Preauthorization for dietary products may be required if the preauthorization requirement is stated in the policy.

(4) The uniform billing code Standard Number 27-4010, "Coverage for Metabolic Dietary Products," published by the Utah Health Information Network, implemented February 12, 1999, is incorporated in this rule by reference. This uniform billing standard is adopted under 31A-22-614.5, and shall be accepted and utilized for the billing and processing of claims for dietary products coverage. This standard is available at the Utah Insurance Department upon request.

R590-194-6. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such validity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declare to be severable.

KEY: insurance law
March 23, 1999 **31A-2-201**
31A-22-614.5
31A-22-623

R657. Natural Resources, Wildlife Resources.
R657-27. License Agent Procedures.
R657-27-1. Purpose and Authority.

Under Section 23-19-15, this rule provides the application procedures, standards, and requirements for wildlife license agents.

R657-27-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Application" means a written request to be authorized by the division to sell wildlife documents.

(b) "Big Game Permit Sales Agreement" means a supplemental agreement to the License Agent Authorization allowing a license agent to sell big game hunting permits.

(c) "License agent" means a person authorized by the division to sell wildlife documents.

(d) "License Agent Authorization" means an agreement between the division and a license agent, allowing a license agent to sell wildlife documents.

(e) "Presiding officer" means the director of the division or the director's designee.

(f) "Remuneration" means money that a license agent receives for each wildlife document sold as provided in Subsection 23-19-15(1).

(g) "Wildlife documents" means licenses, permits, tags, Wildlife Habitat Authorizations and Heritage Certificates.

R657-27-3. Application.

(1) License agent applications may be obtained from the Licensing Section in the Salt Lake Office.

(2) License agent applications shall be accepted from any person located within Utah or in close proximity to Utah.

(3) Applications shall be processed within 30 days.

(4) The applicant must:

(a) complete and return the application to the Licensing Section in the Salt Lake Office; and

(b) pay a non refundable application fee.

(5) A separate application and application fee must be submitted for each location where wildlife documents will be sold.

R657-27-4. License Agent Eligibility - Reasons for Application Denial - Term of Authorization.

(1) The division may deny a license agent application for any of the following reasons:

(a) A sufficient number of license agents already exist in the area;

(b) The applicant does not have adequate security including a safe or locking cabinet in which to store wildlife documents;

(c) The applicant has previously been authorized to sell wildlife documents and the applicant:

(i) failed to comply with the license agent authorization or any provision of statute or rule governing license agents; or

(ii) was terminated by the division as a license agent;

(d) The applicant provided false information on the license agent application;

(e) The applicant has been convicted of a wildlife related violation.

(2) The division shall send the applicant a written notice stating the reason for denial.

(3) If the division approves the license agent application a license agent authorization shall be sent to the applicant.

(4) The license agent authorization is not effective until:

(a) it is signed and notarized by the applicant; and

(b) signed by the director.

(5) The license agent authorization must be returned to the Licensing Section in the Salt Lake Office within 30 days of being received.

(6) Each license agent authorization shall be established for a term of five years.

R657-27-5. Surety Bond Requirement.

(1) After approval, but before the license agent authorization is executed, the division may require the applicant to post a reasonable surety bond in an amount determined by the division.

(2) The division may require any existing license agent to obtain a reasonable surety bond in an amount determined by the division after providing the license agent with 30 days written notice.

(3) The division may require a reasonable increase in the amount of the bond after providing the license agent with 30 days written notice.

(4) The division may waive the surety bond requirement after a person has been authorized as a license agent for a minimum of five consecutive years and meets the following criteria:

(a) The license agent is located in Utah;

(b) The license agent is under the jurisdiction of Utah;

(c) All reports for wildlife documents have been made to the division according to the provisions of this rule and Section 23-19-15;

(d) The license agent has maintained the surety bond without interruption for 5 years;

(e) Payment to the division for all wildlife documents sold is current;

(f) The license agent has complied with the provisions of the license agent authorization, the provisions of Section 23-19-15, and this rule; and

(g) Payment made to the division has not been returned for non sufficient funds.

R657-27-6. License Agent Obligations.

(1) Each license agent shall:

(a) report all wildlife document sales to the division on or before the 10th day of each month;

(b) remit all proceeds from wildlife document sales, minus remuneration, to the division on or before the 10th day of each month;

(c) retain all money obtained from wildlife document sales separate from the private funds of the license agent except remuneration;

(d) keep wildlife documents out of the public view during business hours;

(e) keep wildlife documents in a safe or locked cabinet after business hours;

(f) display all signs and distribute proclamations provided by the division;

(g) have all sales clerks and management staff available for sales training; and

(h) maintain a License Agent Manual provided by the division and make it available to the license agent's staff.

R657-27-7. Lost or Stolen Wildlife Documents.

(1) The license agent shall act as bailee for purposes of safeguarding all wildlife documents issued to the agent by the division.

(2)(a) The license agent shall remit full payment to the division for any wildlife documents lost, stolen, or unaccounted for unless otherwise relieved for good cause by the director.

(b) Payments made to the division for any wildlife documents that are lost or unaccounted for may be refunded if the wildlife documents are returned to the Licensing Section in the Salt Lake office by June 30 of the current fiscal year.

R657-27-8. Audits.

(1) License agents are subject to an audit without prior notification anytime during normal business hours to assess financial and procedural compliance with statute, rule, and the terms of the license agent authorization.

(2) The division shall provide a written report to the license agent of any finding of noncompliance within five days of the completion of the audit.

R657-27-9. Checks Returned for Nonsufficient Funds.

(1) The division may require a license agent to remit payment for wildlife documents in the form of a cashiers check or money order if any check from a license agent is returned to the division for non sufficient funds.

(2) The presiding officer may revoke a license agent authorization pursuant to Section 63-46b-20 if payment is not made to the division within five business days after the license agent receives written notification of the returned check.

R657-27-10. Change of Business Ownership.

(1) License agent authorizations are nontransferable.

(2) The license agent shall notify the division of any anticipated change of ownership of the license agent's business at least 30 days prior to the change of ownership.

(3) Prior to change of ownership the license agent shall:

(a) remit payment for all wildlife documents sold minus remuneration; and

(b) return all unsold wildlife documents to the division.

R657-27-11. Revocation of License Agent Authorization.

(1) The presiding officer may revoke a license agent authorization pursuant to Chapter 46b, Title 63, Utah Administrative Procedures Act, if the presiding officer determines that the agent or the agent's employee violated:

(a) the terms of the license agent authorization;

(b) the terms of the Big Game Permit Sales Agreement;

(c) any provision of Title 23, Wildlife Resources Code; or

(d) any rule promulgated under Title 23, Wildlife Resources Code.

(2) The presiding officer may hold a hearing to determine matters relating to the license agent revocation if the license agent makes a written request for a hearing within 10 days after the notice of agency action is issued.

R657-27-12. Termination of Authorization by the License Agent.

(1) A license agent may terminate a license agent authorization by submitting a written request to the Licensing Section in the Salt Lake Office.

(2) Any request for termination shall state the requested date of termination.

(3) On or before the effective date of termination the license agent shall:

(a) discontinue selling wildlife documents;

(b) return all unsold wildlife documents to the division; and

(c) return to the division any signs, proclamations or other information provided by the division.

(4) On or before the 10th day of the month following the date of termination the license agent shall remit payment for all wildlife documents minus remuneration to the division.

R657-27-13. Reapplying for a License Agent Authorization.

(1) The division may not renew a license agent authorization.

(2) At the end of the five-year term of authorization to sell wildlife documents, a license agent may reapply for a license agent authorization by following the application procedures prescribed in this rule.

R657-27-14. Violation.

(1) It is unlawful for a license agent to sell:

(a) any wildlife documents in violation of the License Agent Authorization; or

(b) any big game permits in violation of the Big Game Permit Sales Agreement.

KEY: licensing, wildlife, wildlife law, rules and procedures
March 18, 1999 23-19-15
Notice of Continuation April 11, 1997

R698. Public Safety, Administration.
R698-4. Certification of the Law Enforcement Agency of a Private College or University.
R698-4-1. Purpose.

Subsection 53-13-103(1)(b)(xi) provides that the members of a law enforcement agency of a private college or university may be law enforcement officers provided the law enforcement agency of the college or university has been certified by the commissioner of public safety in accordance with rules of the Department of Public Safety (department). The purpose of this rule is to establish the criteria the law enforcement agency of a private college or university must meet in order to be certified.

R698-4-2. Authority.

This rule is authorized by Subsection 53-13-103(1)(b)(xi).

R698-4-3. Application for Certification.

The law enforcement agency of a private university or college wishing to be certified shall make written application for certification to the commissioner of public safety.

R698-4-4. Criteria for Certification.

The following criteria must be met in order for the law enforcement agency of a private college or university to be eligible for certification:

(1) In accordance with Subsections 53-6-202(4)(a) and 53-6-205(1)(a), the law enforcement agency's officers must successfully complete the basic course at a certified academy, or successfully pass a state certification examination prior to exercising peace officer authority.

(2) The law enforcement agency must pay for the cost of the basic course training received by it's officers.

(3) In accordance with Subsection 53-6-202(4)(a), the law enforcement agency's officers must satisfactorily complete annual certified training of not less than 40 hours.

(4) The law enforcement agency's officers shall be subject to all of the requirements of Title 53, Chapter 6, Part 2.

(5) The law enforcement agency's officers may exercise peace officer authority beyond the geographical limits of the private college or university only in accordance with Section 77-9-3.

(6) The law enforcement agency's policy and procedure manual shall include a provision requiring it's officers to comply with Section 77-9-3.

(7) The law enforcement agency's policy and procedure manual shall include a provision requiring it's officers to comply with the Law Enforcement Code of Ethics as published by the International Association of Chiefs of Police in the "Police Chief Magazine" (1992).

(8) The law enforcement agency shall comply with the reporting requirements of the statewide crime reporting system established by the department pursuant to Subsection 53-10-202(2).

(9) The private college or university sponsoring the law enforcement agency must be currently accredited by an appropriate accreditation agency recognized by the United States Department of Education.

R698-4-5. Denial or Revocation of Certification Status.

(1) Certification of the law enforcement agency of a private college or university may be denied or revoked for failure to meet the certification criteria set forth in this rule.

(2) Action to deny or revoke a certification shall be considered a formal adjudicative proceeding in accordance with the Administrative Procedures Act, Title 63, Chapter 46b.

(3) A private college or university which is denied certification, or which is notified that the commissioner of public safety intends to revoke its certification, is entitled to a formal hearing before the commissioner or the commissioner's designee.

KEY: colleges, law enforcement officer certification
March 5, 1999 53-13-103(1)(b)(xi)

R708. Public Safety, Driver License.
R708-2. Commercial Driver Training Schools.
R708-2-1. Purpose.

Section 53-3-501 through 509, requires the Driver License Division to administer the Commercial Driver Training Schools Act by licensing and regulating commercial driver training schools and instructors of such schools. This rule assists the division in doing that.

R708-2-2. Authority.

This rule is authorized by Section 53-3-505.

R708-2-3. Definitions.

(1) "Behind-the-wheel instruction" means instruction a student receives while driving a commercial driver training vehicle.

(2) "Branch office" means an approved location where the business of the driver training school is conducted other than the principal place of business.

(3) "Classroom instruction" means that part of the driver training course which takes place in a classroom and which utilizes effective teaching methods such as lecture, discussion, and audio-visual aids.

(4) "Commercial driver training school" or "school" means a business enterprise conducted by an individual, association, partnership, or corporation for the education and training of persons, either practically or theoretically, or both, to drive motor vehicles, including motorcycles, and to prepare an applicant for an examination given by the state for a license or learner permit, and charging a consideration or tuition for those services.

(5) "Commercial driver training vehicle" means a motor vehicle equipped with a second functioning foot brake and inside and outside mirrors which are positioned for use by the instructor for the purpose of observing rearward.

(6) "Commissioner" means the Commissioner of the Department of Public Safety.

(7) "Corporation" means a business incorporated under the laws of a state or other jurisdiction.

(8) "Department" means the Department of Public Safety.

(9) "Division" means the Driver License Division.

(10) "Driver training" means behind the wheel instruction, extended learning, observation time, and classroom instruction provided by a driver training school for the purpose of teaching students to safely operate motor vehicles.

(11) "Extended learning course" means a home-study course in driver education offered by a school and approved and operated under the direction of an institution of higher learning. The division must also approve the course.

(12) "Fraudulent practices" means any misrepresentation on the part of a licensee or any partner, officer, agent, or employee of a licensee tending to induce another to part with something of value or to surrender a legal right.

(13) "Higher education" means a university or college currently accredited by an appropriate accreditation agency recognized by the U.S. Dept. of Education and the Utah State Board of Regents.

(14) "Instructor" means any person, whether acting for himself as operator of a commercial driver training school or for any school for compensation, who teaches, conducts classes of, gives demonstrations to, or supervises practice of persons learning to drive motor vehicles, including motorcycles, or preparing to take an examination for a license or learner permit, and any person who supervises the work of any other instructor.

(15) "Observation time" means the time a student is riding in the rear seat of a commercial driver training vehicle to observe the driver instructor, other student drivers, and other road users.

(16) "Partnership" means an association of two or more persons who co-own and operate a commercial driver training school.

R708-2-4. Licensing Requirement for a Commercial Driver Training School.

(1) Every person who operates a commercial driver training school shall obtain a license from the division. License applications may be obtained from the Driver License Division at 4501 South 2700 West, Salt Lake City, Utah. Applicants are also responsible for obtaining any business licenses required by the municipality or county in which they are located. School and business licenses must be conspicuously displayed in the licensee's principal place of business and branch offices.

(2) A license is valid for the calendar year and expires on December 31 of the year issued. The annual fee for an original license is $80. The annual fee for a renewal license is $50. The annual fee for each branch license is $20. Fees shall be payable to the Department of Public Safety. If a license is suspended or revoked, no part of the fee will be refunded.

(3) Licenses are not transferable.

(4) If a license is lost or destroyed, a duplicate will be issued upon proof of loss or destruction and payment of a fee of $5. A notarized affidavit setting forth the date the license was lost or destroyed and the circumstances of such loss or destruction must be provided.

(5) Whenever any school or branch office is discontinued, the school or branch office license must be surrendered to the division within five days. In such cases, the licensee shall state in writing the reason for such surrender.

(6) Any branch office or classroom facility in a location other than the school's principal place of business shall be separately licensed. A branch office shall meet the same requirements as the school's principal place of business and shall be similarly equipped and perform substantially the same services. Application for a branch office license shall be made on an application form provided by the division. Branch offices shall be inspected by a division representative before they can be licensed.

R708-2-5. Application for a Commercial Driver Training School License.

(1) Application for an original or renewal commercial driver training school license must be made on forms provided by the division, signed by the applicant, and notarized. In the case of a partnership, the application must be signed by all partners. In the case of a corporation, the application must be signed by an officer of the corporation. Applications must be submitted at least 30 days prior to licensing. An appointment should be made when the application is filed to have the school

inspected by a division representative.

(2) Every application must be accompanied by the following supplementary documents:

(a) in the case of a corporation, a certified copy of a certificate of incorporation;

(b) samples of all forms and receipts to be used by the school;

(c) a schedule of fees for all services to be performed by the school;

(d) a fingerprint record for each applicant, partner or corporate officers. A Bureau of Criminal Identification check will be done by the division on all applicants, partners, and corporate officers. Fingerprints may be taken by any law enforcement agency. The division may require renewal applicants to submit new fingerprint records;

(e) a certificate of insurance for each vehicle used for driver training purposes; and

(f) a copy of all tests and criteria which the school requires in order for a student to satisfactorily complete the driver training course.

(3) The division may require a financial statement from each applicant.

R708-2-6. Licensing Requirements for a Commercial Driver Training School Instructor.

(1) Every person who serves as an instructor in a commercial driver training school, including the owner, operator, partner or corporate officer of the licensee, substitute or part-time instructor, shall obtain an instructor's license from the division. Such license shall be valid only for the specific driver training school listed on the license.

(2) A license is valid for the calendar year and expires on December 31 of the year issued. The annual fee for an original license is $15. The annual fee for a renewal license is $10. Fees shall be payable to the Department of Public Safety. If a license is suspended or revoked no part of the fee will be refunded.

(3) Licenses are not transferable.

(4) If an instructor license is lost or destroyed, a duplicate will be issued upon proof of loss or destruction and payment of a fee of $3. A notarized affidavit setting forth the date the license was lost or destroyed and the circumstances of such loss or destruction must be provided.

R708-2-7. Additional Requirements for Commercial Driver Training School Instructors.

(1) In addition to obtaining a license, a commercial driver training school instructor must:

(a) have a valid Utah driver license;

(b) be at least twenty one years of age;

(c) have at least three years of driving experience;

(d) have a driving record free of conviction for a moving violation or chargeable accident resulting in suspension or revocation of the driver license for the two year period immediately prior to application and during employment and be checked to determine if there is an unsatisfactory driving record in any state;

(e) be in acceptable physical condition as required by Section 8 of this rule;

(f) complete specialized professional preparation in driver safety education consisting of not less than 21 quarter hours of credit as approved by the division. Of the 21 hours, one class must be in teaching methodology and another class must include basic driver training instruction or organization and administration of driver training instruction;

(g) pass a written test given by the division. The test may cover commercial driver training school rules, traffic laws, safe driving practices, motor vehicle operation, teaching methods and techniques, statutes pertaining to commercial driver training schools, business ethics, office procedures and record keeping, financial responsibility, no fault insurance, procedures involved in suspension or revocation of an individual's driving privilege, material contained in the "Utah Driver Handbook", and traffic safety education programs;

(h) pass a practical driving test;

(i) pass the same standard eye test that is given to applicants who apply for a Utah operator or commercial driver license; and

(j) submit a fingerprint record for a criminal history record check.

(2) Instructors shall be sponsored by a commercial driver training school which shall be responsible for controlling and supervising the actions of the instructors. No school may knowingly employ any person as an instructor or in any other capacity if such person has been convicted of a felony or any crime involving moral turpitude.

(3) The instructor's license must be in the possession of the instructor at all times while providing behind the wheel or classroom instruction.

R708-2-8. Application and Medical Requirements for a Commercial Driver Training School Instructor License.

(1) Application for an original or renewal instructor's license must be made on forms provided by the division, signed by the applicant in front of a division employee authorized to administer oaths. Applications must be submitted at least 30 days prior to licensing. The original and each yearly renewal application must be accompanied by a medical profile form provided by the division and completed by a health care professional as defined in 53-3-302(2).

(2) The medical profile form shall indicate any physical or mental impairments which may preclude service as a commercial driver training school instructor. The physical examinations must take place no more than three months prior to application.

(3) The commercial driver training school desiring to employ the applicant as an instructor must sign the application verifying that the applicant will be employed by the school.

(4) When deemed necessary by the division, an applicant seeking to renew an instructor's permit may be required to take a driving skills test.

R708-2-9. Re-certification.

Holders of school licenses and instructor's licenses may at the discretion of the division be required to re-certify every three years. Re-certification may be obtained by submitting proof of completion of classes, seminars, and workshops approved by the division.

R708-2-10. Classroom and Behind-The-Wheel Instruction.

(1) Classroom instruction for students shall meet or exceed 18 clock hours and shall be conducted in not less than nine separate class sessions on nine separate days of two hours per class. Not more than five of the classroom hours may be devoted to showing slides or films. Classroom instruction shall cover the following areas:

(a) attitudes and physical characteristics of drivers;

(b) driving laws with special emphasis on Utah law;

(c) driving in urban, suburban, and rural areas;

(d) driving on freeways;

(e) maintenance of the motor vehicle;

(f) affect of drugs and alcohol on driving;

(g) motorcycles, bicycles, trucks, and pedestrian's in traffic;

(h) driving skills;

(i) affect of the motor vehicle on modern life;

(j) Utah's motor vehicle laws regarding financial responsibility and no fault insurance, and a driver's responsibility when involved in an accident; and

(k) suspension or revocation of a driver license.

(2) Behind-the-wheel instruction shall include a minimum of six clock hours of instruction in a dual-control vehicle with a licensed instructor. Each student will be limited to a maximum of two hours of behind-the-wheel instruction per day. The front seat of the vehicle shall be occupied by the instructor and no more than one student. Under no circumstances shall there be more than five individuals in the vehicle.

(a) Behind-the-wheel instruction shall include instructor demonstrations and student practice in using vehicle controls to start, shift gears, make right and left turns, stop, backup, and park. This instruction shall begin under relatively simple conditions and progress until the student has acquired reasonable skill in operating the vehicle under varying traffic conditions.

(b) Students shall receive experience in driving on urban streets, open highways, and freeways. Behind the wheel instruction shall include the experience of driving under variable conditions which may be used by the instructor at different times of the day and year. Special emphasis should be given to teaching students to show courtesy to other drivers and pedestrians.

(c) Students shall receive a minimum of six clock hours of observation time. This instruction shall be obtained while the student is in the rear seat of the vehicle and may not exceed two hours per day. Students observing from the rear seat, as well as the student driver, should benefit from time in the vehicle. The instructor's role is not merely to provide driving experience for the student behind-the-wheel, but to make the vehicle a practical classroom on wheels where all students may learn about the problems which face a driver and the appropriate solution to such problems.

(3) Instructors shall screen students for visual acuity and physical or emotional conditions which may compromise public safety before allowing students to participate in behind-the-wheel instruction.

(a) Students must have 20/40 visual acuity or better in each eye and a visual field of 120 degrees in each eye. Students with less than the required visual acuity and/or visual field in each eye shall be referred to the division for further consideration.

(b) Students must answer all questions on a health questionnaire approved by the Driver License Medical Advisory Board and sign a statement of affirmation of truth. Students indicating a physical or emotional condition on the questionnaire shall be referred to the division for further consideration. Health questionnaires shall be provided by the division.

(4) Commercial driver training schools shall provide each student a copy of the current Utah Driver Handbook. The handbook shall not be used as the sole text of the course, but as an essential aid when Utah traffic laws are studied. Handbooks may be obtained by the schools from the division.

R708-2-11. Monthly Reports.

(1) Each commercial driver training school shall submit a monthly report of the number of students completing both classroom and behind-the-wheel instruction.

(2) Monthly reports shall be submitted on forms supplied by the division and must be received by the division no later than the 15th day of each month.

(3) Failure to submit monthly reports within the prescribed time is grounds for the cancellation or revocation of the school's license.

R708-2-12. Extended Learning Course.

(1) A commercial driver training school may offer an extended learning course of instruction as a substitute for the classroom instruction set forth in Section 10 of this rule provided such course is approved by an institution of higher learning and the division.

(2) An extended learning course must be operated under the direction of an institution of higher learning. The institution of higher learning shall notify the division in writing when it has approved a school's extended learning course. The institution of higher learning will monitor any extended learning course approved by them to ensure the course is run as originally planned. They will notify the division of any substantive changes in the course as well as their approval of such changes. An institution of higher learning can approve the extended learning course of more than one school.

(3) An extended learning course shall consist at a minimum of a text, a workbook, and a 50 question competency test which addresses the subjects described in Section 10 of this rule.

(a) All materials, including texts, workbooks, and tests, used in the course must be submitted by the school to the division for approval.

(b) The average study time required to complete the workbook exercises must meet or exceed 30 clock hours.

(c) An extended learning student must complete all workbook exercises.

(d) An extended learning student must pass the 50 question written competency test at 80% or better. Testing shall occur under the following conditions:

(i) the test shall be taken at the school;

(ii) testing procedures shall be monitored by a licenced instructor;

(iii) the test shall be completed by the student without any outside help;

(iv) the school shall maintain at least three separate 50 question competency tests created from a test pool of at least 200 questions;

(v) the extended learning student will be given a minimum of three opportunities to pass the test. After each failure the school will provide the student with additional instruction to assist the student to pass the next test;

(vi) the original fees for the course must include the three opportunities to pass the test and any additional instruction that is required;

(vii) an extended learning student must pass the test in order to complete driver training; and

(viii) the school will maintain for three years records of all tests administered by the school. Test records shall include the results of all tests taken by every student.

R708-2-13. Instruction Permits.

(1) A commercial driver training school must obtain from the division an instruction permit for each student enrolled in the school. An instruction permit provides proof that the student is enrolled in a driver training course and is licensed to receive behind-the-wheel instruction with a licensed instructor. Instruction permits shall be retained by the instructor and shall be available in the vehicle at all times while the student is driving.

(a) It is the responsibility of the school to ensure that the instruction permit application contains the correct name, date of birth, and address of the student, by means of a birth certificate or other official form of identification.

(b) Application for an instruction permit must be typed or printed in ink. Duplicate instruction permits may not be issued unless the student's name and date of birth are the same as those on the original application.

(c) Instruction permits shall not be issued for persons under the age of 15 years and nine months.

(d) All unused instruction permits issued between January 1 and September 30 of each year shall be returned to the division prior to December 31 of that year. Unused permits issued during October, November, and December shall be submitted with the unused permits of the following year.

(2) Upon successful completion of the driver training course, the commercial driver training school shall release to the student a form consisting of an instruction permit, a certificate of training which must be signed by the student, and a certificate of completion which must be signed by the instructor and the school owner.

(3) The student shall present the certificate of completion to the division when the student makes application for a driver license.

(4) Duplicate certificates of completion may be obtained for $5.

R708-2-14. Students Transferring from the Utah Public School System.

(1) Students transferring from the Utah public school system will not be given credit by the division for any previous driver education instruction unless authorized in writing by the State Office of Education.

(2) Students who have completed the classroom portion of driver training in another state, but who have not completed behind-the-wheel driving instruction and observation time, may receive credit for the classroom instruction if they provide an authorized letter or certificate from the school which provided the training. The letter or certificate must state the number of classroom hours completed.

R708-2-15. Commercial Driver Training Vehicles.

(1) Commercial driver training vehicles used for behind-the-wheel instruction shall be properly registered, maintained in safe mechanical condition, and equipped with the following:

(a) functioning dual control brakes;

(b) outside and inside mirrors for both the driver and the instructor for the purpose of observing rearward;

(c) a separate seat belt for each occupant;

(d) functioning heaters and defrosters; and

(e) a functioning fire extinguisher, first aid kit, safety flares and/or reflectors.

(2) Students shall receive instruction in either standard shift or automatic transmission vehicles. The school shall have the option of choosing the type of transmission.

(3) If instruction is given in snow or on icy road surfaces tire chains or snow tires shall be used in compliance with local police or highway patrol recommendations.

(4) Vehicles must be capable of passing a state safety inspection at all times during their instructional use. Failure to maintain a vehicle in safe operating condition is grounds for the cancellation or revocation of the license of the school operating the vehicle.

(5) Vehicles unable to meet safety standards shall be replaced by the school.

(6) It is the responsibility of the school to notify the division of any vehicle added to or deleted from their fleet. No vehicle may be used for driver training until it passes inspection by the division.

(7) Each vehicle used by a school for driver training shall be properly identified to safeguard against accidents. A vehicle is properly identified when the words "STUDENT DRIVER" are displayed on the front and rear and on both the left and right sides of the vehicle. The letters shall be at least three inches in height.

(8) Advertising or other markings on the vehicle for identifying or advertizing the school shall not exceed two inches in height.

R708-2-16. Notification of Accident.

If any driver training vehicle is involved in an accident during the course of instruction, the school shall notify the division in writing within five working days of the date of the accident and submit to the division a copy of the investigating law enforcement officer's accident report as soon as it is available.

R708-2-17. Insurance.

(1) Each commercial driver training school must file with the division evidence of the minimum required insurance with an insurance company authorized to do business in Utah.

Schools shall maintain suitable insurance coverage on each vehicle used in the driver training program sufficient to protect the instructor, students, and the public. The minimum insurance coverage is that required by the Utah Insurance Code, in Title 31A, Chapter 22, Part 3.

(2) The insurance company supplying the policy shall furnish to the division a certificate of insurance and shall notify the division immediately upon cancellation of said insurance. Operation of a vehicle without the required minimum insurance coverage shall be grounds for cancellation or revocation of the licensee's license.

R708-2-18. Contracts.

(1) A student shall not be given lessons, lectures, tutoring or any other service relating to instruction in driver training, unless a written contract approved by the division has been executed by the school and the student.

(2) A copy of the contract must be given to the student and the original retained by the school.

(3) A school shall not agree orally or in writing to give an unlimited number of lessons, to give instruction until the driver license is obtained, or to give free lessons, or a premium or discount if a driver license is not obtained.

(4) The term "no refund" or similar phrase is not permitted in contracts.

R708-2-19. Records.

(1) Every school shall maintain the following records:

(a) A permanently bound book, with pages consecutively numbered, setting forth the name, address, record of every person receiving lessons, lectures, tutoring, instruction of any kind or any other services relating to instruction in the operation of motor vehicles.

(b) A book or other record showing the date, type and duration of all lessons, lectures, tutoring, instructions or other services relating to instruction in the operation of motor vehicles. It will also contain the names of the instructors giving such lessons or instructions and identification of the vehicle in which any behind the wheel instruction is given.

(2) The division shall review the records of all schools at least annually and may observe the instruction given both in the classroom and behind the wheel. The division shall have the right to review the operation of the schools whenever the division deems it necessary to insure compliance with this rule.

(3) The loss, mutilation or destruction of any records which a school is required to maintain, must be immediately reported by the school to the division by affidavit stating:

(a) The date such records were lost, mutilated or destroyed; and

(b) The circumstances involving such loss, mutilation or destruction.

(4) All records must be retained by the schools for three years during which time they shall be subject to inspection by the division during reasonable business hours.

R708-2-20. Advertising and School Location.

(1) Schools may not imply or expressly guarantee that a driver license is guaranteed or assured. The display of a sign such as "Driver License Secured Here" is forbidden.

(2) A school may display on its premises a sign reading, "This School is Licensed by the State of Utah".

(3) No school may solicit business directly or indirectly or display or distribute any advertising material within 1500 feet of a building in which vehicle registrations or driver licenses are issued to the public.

(4) In municipalities having a population of 50,000 or more, no license will be issued for a commercial driver training school if the school's place of business is located within 1500 feet of a building in which vehicle registrations or driver licenses are issued to the public.

(5) No driver training school may change its place of business or location without prior approval from the division.

(6) Each school shall provide classroom space, either in their own building or in any other building approved by the division. The classroom shall have seating for all students, access to sanitary facilities, and appropriate training aids, such as blackboards, charts, projectors, etc. Classroom facilities and buildings shall comply with federal, state, and local building, fire, safety and health codes.

R708-2-21. Change of Address and Officers.

(1) The commercial driver training school shall immediately notify the division in writing if there is a change in the residence or business address of any individual owner, partner, officer or employee of the school.

(2) The commercial driver training school shall immediately notify the division in writing of any change in officers or directors and shall provide the same information that would be required on an original application by the corporation.

(3) Failure to notify the division of a change of address, or of a change in the officers, directors or controlling stockholders of any corporation, or change in the members of a partnership, may be considered grounds for the cancellation or revocation of the school license.

R708-2-22. Change in Ownership.

(1) In the event of any ownership change in the school, the division must be notified immediately in writing by the new owner and a new application must be submitted. Such application shall be considered a renewal if one or more of the original licensees remain as part owner of the school. In the event the change in ownership is to any person or persons not named in the application for the last current license or renewal license of the school, such license shall be considered a new application.

(2) The division may permit continuance of the school by the current licensee, pending processing of the application made by the person or persons to whom ownership of the school is to be transferred.

(3) Upon issuance of the new license, the prior license must be immediately surrendered to the division. Refund of any part of the license fee is not permitted.

R708-2-23. Grounds for Cancellation, Revocation or Refusal to Issue or Renew Instructor License or School License.

(1) Following a proper hearing, the division may cancel, revoke or refuse to renew a license for either an instructor or a school. The division may also refuse to issue a license for an

instructor or a school. A license may be canceled, revoked or refused for renewal for any of the following reasons:

(a) failure to comply with any of the provisions of Title 53, Chapter 3, Part 5;

(b) failure to comply with any of the provisions of this rule;

(c) providing false information in an application or form required by the division;

(d) commission of a violation of Section 7(1)(d) of this rule pertaining to moving violations or chargeable accident that results in a suspension or revocation of one's driver license;

(e) failure to permit the division or its representatives to inspect the school, classrooms, records, or vehicles used in the instruction of the school's students;

(f) conviction of any crime involving violence, dishonesty, deceit, indecency, degeneracy, drug or alcohol abuse, fraud, or moral turpitude;

(g) conviction of any fraudulent acts or practices by any partner, officer, agent or employee in relation to the business conducted under the license; or

(h) failure to appear for a hearing on any of the above charges; and

(i) violation of any of the provisions of this rule.

(2) Any licensee who has had a license canceled or revoked shall not be eligible to reapply for a license until six months have elapsed since the date of the cancellation or revocation. In addition to the other fees provided for in section 4(2),the licensee shall be required to pay a $25.00 reinstatement fee to the division at the time of application for reinstatement.

(3) Any proceeding to cancel, revoke or refuse to issue or renew a school or instructor license is hereby designated as an informal adjudicative proceeding under the Utah Administrative Procedures Act, Section 63-46b-4.

(4) The following procedures will govern informal adjudicative proceedings:

(a) Action by the division to cancel, revoke or refuse to issue or renew a license will be commenced by the division by the issuance of a notice of agency action. The notice of agency action will comply with the provisions of Section 63-46b-3.

(b) No response is required to the notice of agency action.

(c) An opportunity for a hearing will be granted on a cancellation, revocation or refusal to issue or renew a license.

(d) The licensee or applicant will receive written notice of the hearing at least ten days prior to the date of the hearing.

(e) No discovery, either compulsory or voluntary, will be permitted prior to the hearing except that all parties shall have access to information contained in the division's files, and to investigatory information and materials not restricted by law.

(f) The hearing shall be conducted by an individual designated by the division.

(g) Within twenty days after the close of the hearing or after the failure of a party to appear for the hearing, the individual conducting the hearing shall issue a written decision which shall constitute final agency action. The written decision shall state the decision, the reason for the decision, notice of right to request reconsideration under Section 63-46b-13, notice of right of judicial review under Section 63-46b-15, and the time limits for filing an appeal to the appropriate district court.

KEY: driver education, schools, rules and procedures
March 18, 1999 53-3-505
Notice of Continuation December 3, 1997

R784. Regents (Board of), Salt Lake Community College.
R784-1. Government Records Access and Management Act Rules.
R784-1-1. Purpose.

The purpose of the following rules is to provide procedures for access to government records at Salt Lake Community College.

R784-1-2. Authority.

The authority for the following rule is Section 63-2-204 and Section 63-2-904 of the Government Access and Management Act (GRAMA), effective July 1, 1992.

R784-1-3. Allocation of Responsibility Within Entity.

Salt Lake Community College (including all campuses, centers, satellites and locations) shall be considered a single governmental entity and the President of Salt Lake Community College shall be considered the head.

R784-1-4. Requests for Access.

(a) Requests for access to government records of Salt Lake Community College should be written and made to the Office of Administrative Services in the Administration Building room 050. Response to a request submitted to other persons within Salt Lake Community College may be delayed.

(b) Students requesting their own records and employees requesting their own official personnel file are exempted from using the written request outlined in this document.

(c) Any appeals of denied requests will be reviewed by an Appeals Officer. Requests for appeal should be written and made to the Assistant to the President in the Administration Building room 104. See Subsections 63-2-204(2) and 63-2-204(6).

R784-1-5. Fees.

A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from Salt Lake Community College by contacting the Office of Administrative Services in the Administration Building room 050. Salt Lake Community College may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed $50.00, or if the requester has not paid fees from previous requests.

R784-1-6. Waiver of Fees.

Fees for duplication and compilation of a record may be waived under certain circumstances described in Subsection 63-2-203(3). Requests for this waiver of fees may be made to the Office of Administrative Services in the Administration Building room 050.

R784-1-7. Request for Access for Research Purposes.

Access to private or controlled records for research purposes is allowed by Subsection 63-2-202(8). Requests for access to such records for research purposes may be made to the Office of Administrative Services in the Administration Building room 050.

R784-1-8. Requests for Intellectual Property Records.

Materials, to which Salt Lake Community College owns the intellectual property rights, may be duplicated and distributed in accordance with Subsection 63-2-201(10). Decisions with regard to these rights will be made by the Office of Administrative Services in the Administration Building room 050. Any questions regarding the duplication and distribution of such materials should be addressed to that office.

R784-1-9. Requests to Amend a Record.

An individual may contest the accuracy or completeness of a document pertaining to him/her pursuant to Section 63-2-603. Such request should be made to the Office of Administrative Services in the Administration Building room 050.

R784-1-10. Appeals of Request to Amend a Record.

Appeals of requests to amend a record shall be handled as informal hearings under the Utah Administrative Procedures Act.

R784-1-11. Time Period Under GRAMA.

All written requests made to the Office of Administrative Services will be responded to according to the time periods specified under GRAMA 63-2-204. Response to a request submitted to other persons within Salt Lake Community College may be delayed.

R784-1-12. Forms.

(a) The forms described as follows shall be completed by requester in connection with records requests.

(1) SLCC GRAMA Request for Records form is for use by all entities requesting records from SLCC. This form is intended to assist entities, who request records, to comply with the requirements of Section 63-2-204(1) regarding the contents of a request.

KEY: GRAMA, SLCC
March 18, 1999 **63-2-204**
63-2-904

R850. School and Institutional Trust Lands, Administration.
R850-20. Mineral Resources.
R850-20-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-2-402(1) which authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the issuance of mineral leases and management of state owned lands and mineral resources.

R850-20-150. Planning.

Pursuant to Section 53C-2-201(1)(a), this category of activity carries no planning obligations by the agency beyond existing rule-based analysis and approval processes. Mineral development activities are regulated pursuant to R645, R647, and R649.

R850-20-175. Coal Leasing of Lands Acquired in Public Law 105-335 Exchange.

1. Acquired lands shall mean lands acquired by the School and Institutional Trust Lands Administration pursuant to the Utah Schools and Lands Exchange Act of 1998, Public Law 105-335, 112 Stat. 3139 (1998)(the "Act").

2. Leasing of coal interests in the acquired lands shall be governed by applicable provisions of state law, the Act, that certain Memorandum of Understanding Between the Utah School and Institutional Trust Lands Administration, the United States Department of Agriculture, and the United States Department of the Interior dated January 5, 1999, as amended from time to time, and, except as provided by R850-20-175(5), by the provisions of R850.

3. The director shall have broad discretion to determine terms, conditions and procedures for leasing coal interests in the acquired lands by simultaneous filing, including without limitation determination of rental rates, lease forms and lease stipulations for particular tracts, the amount of any required bid deposit, the minimum acceptable bid for particular tracts, terms of payment for bonus bids, and bidding procedures generally. The director may, but is not obligated to, disclose the minimum acceptable bid in advance of offering the lease by simultaneous filing.

4. In the event that the high bid in any simultaneous lease filing does not meet the minimum acceptable bid previously determined by the director, the director may, but is not obligated to, negotiate with the high bidder to obtain a negotiated bid that, in the discretion of the director, represents fair market value. Alternatively, the director may re-offer the lands for simultaneous filing, hold an oral auction of the lands pursuant to Subsection 53C-2-407(4), or withdraw the lands from leasing.

5. The following rules shall not apply to leasing of coal interests in the acquired lands by simultaneous filing: R850-20-700 (Non-Contiguous Tracts); R850-20-900 (Lease Acreage Limitations); R850-20-1000(1)(a)(Rentals); R850-20-1500 (Minimum Bid/Simultaneous Filing); R850-20-1600 (Posting Dates/Simultaneous Filing); R850-20-1100 (Rental Credit).

6. Nothing in this rule shall prevent the agency from leasing or otherwise disposing of coal interests in the acquired lands pursuant to Subsection 53C-2-401(1)(d)(ii), subject to compliance with applicable law.

R850-20-200. Mineral Leases--Issuance.

Applications are made for and the agency shall issue separate mineral leases on the following classifications of mineral substances:

1. Metalliferous Minerals - shall include Aluminum, Antimony, Arsenic, Beryllium, Bismuth, Chromium, Cadmium, Cerium, Columbium, Cobalt, Copper, Fluorspar, Gallium, Gold, Germanium, Hafnium, Iron, Indium, Lead, Mercury, Manganese, Molybdenum, Nickel, Platinum, Group Metals, Radium, Silver, Selenium, Scandium, Rare Earth Metals, Rhenium, Tantalum, Tin, Thorium, Tungsten, Thallium, Tellurium, Vanadium, Uranium, Ytterbium, and Zinc.

2. Oil, Gas, and Hydrocarbon - shall include oil, natural gas, elaterite, ozocerite, and other hydrocarbons (whether the same be found in solid, semi-solid, liquid, vaporous, or any other form) including tar, bitumen, asphaltum, and maltha, and other gases. The oil, gas, and hydrocarbon category shall not include coal, oil shale, or gilsonite.

3. Oil Shale - shall include any sedimentary rock containing kerogen.

4. Coal - shall include black or brownish-black solid fossil fuel that has been subjected to the natural processes of coalification and which falls within the classification of coal by rank: I Anthracite, II Bituminous, III Sub-Bituminous, IV Lignitic.

5. Potash - shall include the chlorides, sulfates, carbonates, borates, silicates, and nitrates of potassium.

6. Phosphate - shall mean any phosphate rock containing one or more phosphate minerals such as calcium phosphate and shall include all phosphatized limestones, sandstones, shales, and igneous rocks.

7. Clay Minerals - shall include Kaolin, Bentonite, Ball Clay, Fire Clay, Fuller Earth, and clays or shales having unique characteristics giving the mineral deposit distinct and special value, such as Carbonaceous Shale, Humic Shale, and Baked Shale.

8. Limestone - shall include bedded sedimentary rock having a predominant composition of calcium carbonate or calcium magnesium carbonate.

9. Gemstone and Fossil - Agate, Amber, Beryl, Calcite, Chert, Coral, Corundum, Diamond, Feldspar, Garnet, Geodes, Jade, Jasper, Olivine, Opal, Pearl, Quartz, Septarian Nodules, Spinel, Spodumene, Topaz, Tourmaline, Turquoise, and Zircon; and Coquina, Petrified Wood, Trilobites, and Other Fossilized Flora and Fauna.

10. Gypsum - Alabaster, Anhydrite, Gypsite, Satin Spar, and Selenite.

11. Gilsonite.

12. Volcanic Material - shall include Volcanic Pyroclastic Material including Ash, Blocks, Bombs, and Tuff; and Volcanic Glass Material including Perlite, Pitchstone, Pumice, Scoria, and Vitrophyre.

13. Industrial Sands - Abrasive sands, Filler sands, Foundry Sands, Frac Sands, Glass Sands, Lime Sands, Magnetic Sands, Silica Sands, and other uncommon sands used in industrial applications.

14. Mineral Salts.

R850-20-300. Non-Classified Minerals.

A person may make application for and the agency may issue leases covering other minerals not included in R850-20-200 classifications. These leases are on terms and conditions as the agency finds to be in the best interest of the Trust Lands Administration.

R850-20-400. Close Association Minerals.

A mineral lease issued as to any category shall include other minerals found in a close association with the expressly leased minerals when the expressly leased minerals cannot reasonably be mined or removed separately.

R850-20-500. Mineral Estate Distinctions.

Common varieties of sand and gravel and volcanic cinder are not considered part of the mineral estate on Trust Lands Administration owned lands in Utah. These commodities are withdrawn from leasing and may only be obtained through a materials permit approved by the agency director. Materials permits are administered through the regional offices of the agency.

R850-20-700. Non-Contiguous Tracts.

A separate application is filed for each non-contiguous tract of land sought to be leased, unless all of the tracts sought to be leased fall entirely within a single township.

R850-20-800. Size of Leasable Tract.

Except for good cause shown, no mineral lease is issued for a tract less than a quarter-quarter section or surveyed lot, except where the land owned by the Trust Lands Administration within any quarter-quarter section or surveyed lot is less than the whole thereof, in which case the lease will be issued only on the entire area owned and available for lease within the quarter-quarter section or surveyed lot.

R850-20-900. Lease Acreage Limitations.

Mineral leases are limited to no more than 2,560.00 acres or four sections.

R850-20-1000. Rentals and Royalties.

1. Rentals

(a) Rental for the first lease year is at the rate of $1 per acre, or fractional part thereof, per annum, regardless of percentage of Trust Lands Administration ownership in any given acre of land. Subsequent rental paying dates shall be on or before the annual anniversary date of the effective date of the lease, the effective date of the lease being the first day of the month following the date on which the lease is issued.

(b) Any overpayment of advance rental occurring from mineral lease applicant's incorrect listing of acreage of lands described in the application, may, at the option of the agency, be credited toward the applicant's rental account.

(c) Minimum annual rental on any mineral lease is $20.

(d) The agency shall accept lease payments made by any party, but the acceptance of lease payments shall not be deemed to be a recognition of any interest of the payee in the lease.

2. Royalty Provisions

The following production royalty rates shall apply to all classified mineral leases, as listed in R850-20-200, issued on or after the effective date of the applicable adjusted royalty rate. Mineral leases entered into prior to the effective date of adjusted royalty rates shall retain the royalty rate as specified in the lease agreement. The board shall review production royalty rates on a timely basis and shall adjust rates when in the best interest of the trust. Production royalty rates for non-classified minerals shall be established by the board as the need arises.

(a) Royalty rates on substances under oil, gas, and hydrocarbon leases.

TABLE

Oil	12-1/2%	-	Sulfur	12-1/2%
Gas	12-1/2%	-	Other hydrocarbon substances	6-1/4% (1)

(1) During the first ten years of production and increasing annually thereafter at the rate of 1% to a maximum of 16-2/3%.

(b) Royalty rates on mineral commodities, coal, and solid hydrocarbons.

TABLE

Coal	8%	Phosphate	5%
Oil Shale (1)	5%	Potash and Associated Minerals	2%
Asphaltic/Bituminous Sands (2)	7%	Gypsum	5%
Gilsonite	10%	Clay	5%
Met. Minerals:		Geothermal Resources	10%
Fissionable	8%	Limestone	5%
Non-Fissionable	4%		
Gemstone/Fossil(3)	10%	Volcanic Materials	5%
Salt (Sodium chloride)	3%	Industrial sands	5%

(1) 5% during the first five years of production and increasing annually thereafter at the rate of 1% to a maximum of 12-1/2% (providing that the first lessee to commercially produce oil shale on Trust Lands Administration lands shall be exempted from royalty payment on the first 200,000 barrels within a 12 month period). (See R850-20-3500.)

(2) May be escalated after the first five years of production at the rate of 1% per annum to maximum of 12-1/2% at lessor's discretion.

(3) Requires payment of annual minimum royalty of $5 per acre.

(c) Notwithstanding the terms of oil, gas, and hydrocarbon lease agreements, gas and natural gas liquid reports, and their required royalty payments, are required to be received by the agency on or before the last day of the second month succeeding the month of production. This extension of payment and reporting time for gas and NGL does not alter the payment and reporting time for oil and condensate royalty which must be received by the agency on or before the last day of the calendar month succeeding the month of production, as currently provided in the lease form.

(d) Any gilsonite lessee may petition the agency to amend its state gilsonite lease as to "Article VI, Payment of Rentals and Royalties", paragraph, SECOND, with the following provision:

SECOND: Lessee shall pay a production royalty on the basis of a percentage of the market price, including all bonuses and allowances received by lessee, f.o.b. the nearest point of sale of the first marketable product or products produced from the leased substances and sold under a bona fide contract of sale, whether or not the product or products are produced through chemical or mechanical treating or processing of the leased substances raw material. It is expressly understood and

agreed that none of lessee's mining, or product costs, including material costs, labor costs, overhead costs, distribution costs, or general and administrative costs may be deducted from market price f.o.b. the point of sale in computing lessor's royalty. All costs shall be entirely borne by lessee and are anticipated by the rate of royalty assigned in his agreement. The royalty shall be 12-1/2% of the market price, as defined above, except where the thickness of the vein is less than 24 inches, in which case the royalty shall be as follows:

TABLE

Vein Size	Royalty Rate
From 23.9 inches to 21.0 inches	8%
From 20.9 inches to 18.0 inches	5%
Less than 18 inches	3%

Where lessee is claiming a vein width less than 24 inches, he shall be required to measure the width of the vein in the course of mining every 20 feet on each level, and each quarter shall submit a statement, signed and attested to by the lessee, giving the tonnage mined during said quarter, the average width of the vein mined during that quarter, and showing on a suitable plat, the location and width of the measured locations. Lessor shall have the right to require that the vein width measurements and quarterly statement be performed and prepared by a certified professional engineer employed by and at the sole expense of lessee. Further, lessee agrees to the following special stipulations regarding the royalty rate provision contained in this lease.

i) This royalty rate provision shall be subject to review in five years from the date of this amendment, at which time the lessor may make any reasonable changes in the provision as may be deemed to be in the best interest of the Trust Lands Administration.

ii) At the time of review of the original lease or of this royalty provision, the lessee shall provide the lessor, at no cost, on a proprietary basis, all of lessees information and documentation regarding sales, costs of production, and ore prices, for all gilsonite mined under this lease.

R850-20-1100. Rental Credit.

The rental paid for the lease year shall be credited only against the production royalties as they accrue for that lease year.

R850-20-1200. Record of Application and Deficient Applications.

Applications for mineral leases, except in the case of simultaneous filing, are received for filing in the office of the agency during office hours. Except as provided, all the applications received, whether by U.S. Mail or by personal delivery over the counter, are immediately stamped with the exact date and time of filing. All applications presented for filing at the opening of the office for business on any business day are stamped received as of 8 a.m., of that day. In the same manner, all applications received in the first delivery of the U.S. Mail of each business day is stamped received as of 8 a.m., of that day. The time indicated on the time stamp is deemed the time of filing unless the agency director shall determine that the application is materially deficient in any particular or particulars. If an application is determined to be deficient, it is returned to the applicant with instructions for its amendment or completion.

If the application is resubmitted in satisfactory form within 15 days from the date of the instructions, it shall retain its original filing time. If the application is resubmitted at any later time, it is deemed filed at the time of resubmission.

R850-20-1300. Order of Filing Conflict.

Except in cases of simultaneous filing, in the event that two or more applications for the same land bear a time stamp showing the said applications were filed at the same time, then the agency shall determine which applicant is awarded a lease by public drawing.

R850-20-1500. Minimum Bid/Simultaneous Filing.

The bid shall at least equal the rental rate for the substance to be leased and shall be the rental for the first year of the lease.

R850-20-1600. Posting Dates/Simultaneous Filing.

Notices of the offering of lands for simultaneous filing will run for 15 working days and are posted at times to insure that all bid openings are on the last Monday of that month.

R850-20-1700. Sealed Envelopes/Simultaneous Filing.

Applications shall be submitted in sealed envelopes marked for simultaneous filing.

R850-20-1800. Application Refund.

If application, or any part thereof, is rejected, money tendered for rental or rejected portion may be refunded or credited.

R850-20-1900. Application Withdrawal.

Should an applicant desire to withdraw his application, the applicant must make a written request. If the request is received prior to the time the agency approves the application, all money tendered by the applicant, except the filing fee, is refunded. If the request is received after approval, then, unless the applicant accepts the offered lease, all money tendered is forfeited to the trust, unless otherwise ordered by the board for good cause shown.

R850-20-2000. Application Withdrawal Under Simultaneous Filing.

Applicants desiring to withdraw an application which has been filed under the simultaneous filing rules, must make a written request. If the request is received before sealed bids for rental have been opened, all money tendered by the applicant, except the filing fee, is refunded. If the request is received after sealed bids for rental have been opened, and if the applicant's rental offer is high, then unless the applicant accepts the offered lease, all money tendered is forfeited to the Trust Lands Administration, unless otherwise ordered by the board for good cause shown.

R850-20-2100. Failure of Trust's Title.

Should it be found necessary to reject an application or to

terminate an existing lease, excepting applications or leases approved through simultaneous leasing procedure, due to failure of trust's land title, then only advance rental paid for the year in which title failure is discovered is refunded. All other advance rentals and fees paid on the application or lease are forfeited to the Trust Lands Administration.

R850-20-2200. Lease Provisions.

In order to affect the purposes of development of mineral resources owned by the Trust Lands Administration, the following provisions, terms and conditions shall apply to all mineral lessees/leases:

1. Preference Rights for Unleased Minerals--Any mineral lessee who discovers any minerals on lands leased from the Trust Lands Administration which are not included within his lease shall have a preference right to a mineral lease covering these unleased minerals, provided the unleased minerals at the time of discovery are not included within a mineral lease or mineral lease application of another party. The preference right lease is issued upon a lease form in current use by the state of Utah. The preference right lease is subject to the rental, royalty, and development requirements as provided in the lease form. The preference right shall not extend to any unleased minerals which have been withdrawn from mineral leasing. The preference right shall continue for a period of 60 days after the discovery of unleased minerals, provided the applicant notifies the agency within the ten days after the discovery and makes application to lease the unleased minerals within 60 days after the date of discovery.

2. Lease Term Exclusion--If drilling operations are being diligently pursued on the leased premises at the end of the term, including any valid extension of any oil and gas lease, the term of the lease shall automatically extend for a term of two additional years. Upon written application by lessee and satisfactory showing of due diligence in prosecution of drilling operations, an extension rider is issued by the agency. Application for extension rider shall be filed by the lessee within 30 days prior to expiration of the fixed term of any valid extension of the lease.

3. Cultural, Paleontological, and Biological Resources--The agency may require the lessee to:

(a) provide a cultural, paleontological or biological survey on lands under mineral lease; and

(b) be responsible for reasonable mitigative actions as specified by the agency. Surveys conducted in performance for another state or federal agency may be submitted to the agency when the survey is also required by the agency.

4. Geologic Data--Lessee or operator shall keep a log of geologic data accumulated or acquired by lessee within the land area described in the lease. This log shall show the formations encountered and any other geologic information reasonably required by lessor and shall be available upon request by the agency. A copy of the log, as well as any data related to exploration drill holes, shall be deposited with the agency upon termination of the lease.

5. Assignments, Subleases and Overriding Royalties

(a) Definitions--

i) total assignment: an assignment of undivided total interest.

ii) interest assignment: an assignment of any working interest less than the undivided total, except overriding royalty interests.

iii) partial assignment: an assignment of part of the lands in a lease and a segregation of the assigned lands into a separate lease.

(b) Any mineral lease may be assigned or subleased as to all or part of the acreage, to any person, firm, association, or corporation qualified to hold a lease, provided, however, that all assignments and subleases are approved by the board or by the agency. No assignment or sublease is effective until approval is given. Any assignment or sublease made without approval is void.

i) The director shall not withhold approval of any transfer of interest which has been properly executed, the required filing fee is paid for each separate lease in which an interest is transferred, and the transfer appears to comply with the law and these rules, unless the director determines that approval would interfere with the development of the subsurface resources, or otherwise be detrimental to the interests of the trust beneficiaries.

ii) If approval of any transfer is withheld by the director, the transferee shall be notified of such decision, and the reason(s) therefor, and as appropriate advise the transferee of what action is necessary to secure approval. Any decision to withhold approval may be appealed pursuant to Rule R850-9 or any similar rule in place at the time of such decision.

(c) Unless otherwise authorized by the agency, an assignment of a portion of a lease covering less than a quarter-quarter section, a surveyed lot, an assignment of a separate zone, or a separate deposit is not approved.

(d) An assignment or sublease shall take effect the first day of the month following the approval of the assignment or sublease by the board, or by the agency. The assignor or sublessor or surety, if any, shall continue to be responsible for performance of any and all obligations as if no assignment or sublease had been executed until the effective date of the assignment or sublease. After the effective date of any assignment of sublease, the assignee or sublessee is bound by the terms of the lease to the same extent as if the assignee or sublessee were the original lessee, any conditions in the assignment to the contrary notwithstanding.

(e) A partial assignment of any lease shall segregate the assigned or retained portions thereof and, after the effective date, release or discharge the assignor from any obligation thereafter accruing with respect to the assigned lands. Segregated leases shall continue in full force and effect for the primary term of the original lease or as further extended pursuant to the terms of the lease.

(f) An assignment or transfer of a lease, interest herein, or of an overriding royalty must be a good and sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the serial number of the lease, the land involved, and the name and address of the assignee, and the interest transferred.

(g) An assignment must affect or concern only one lease or a portion thereof, except for good cause shown.

(h) Any assignment which would create a cumulative overriding royalty in excess of the production royalty payable to

the Trust Lands Administration as landowner will not be approved by the agency. Any agreement to create or any assignment creating overriding royalties or payments out of production removed or sold from the leased lands is subject to the board, after notice and hearing, to require the proper parties thereto to suspend or modify the royalties or payments out of production in such a manner as may be reasonable when and during such period of time as they may constitute any undue economic burden upon the reasonable operations of this lease.

(i) Assignment instructions are as follows:

i) Prepare and execute the assignments in duplicate, complete with acknowledgments.

ii) Each copy of the assignment shall have attached thereto an acceptance of assignment duly executed by the assignee.

iii) All assignments forwarded to or deposited with the agency must be accompanied by the prescribed fee.

(j) If an applicant or lessee dies, his/her rights shall be transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of a death certificate together with other appropriate documentation as may be required to verify change of ownership, and a list, by serial number of all lease interests affected and a statement that all parties are qualified to do business with the agency. The required filing fee must be paid for each separate lease in which an interest is transferred. A bond rider or replacement bond may be required for any bond(s) previously furnished by the decedent.

(k) If a corporate merger affects mineral leases where the transfer of property of the dissolving corporation to the surviving corporation is accomplished by operation of law, no transfer of any affected lease is required. A notification of the merger shall be furnished with a list, by serial number of all lease interests affected. The required filing fee must be paid for each separate lease in which an interest is transferred. A bond rider or replacement bond conditioned to cover the obligations of all affected corporations may be required by the director as a prerequisite to recognition of the merger.

(l) If a change of name of a lessee affects mineral leases the notice of name change shall be submitted in writing with appropriate documentation evidencing the name change accompanied by a list of leases affected by the name change. The required filing fee must be paid for each separate lease in which an interest is transferred. A bond rider or replacement bond to accommodate name change, conditioned to cover the obligations of all affected corporations may be required by the director as a prerequisite to recognition of the change of name.

6. Lease Amendments--When the board approves the amendment of existing mineral leases by substituting a new lease form for the existing form(s), the amended lease will retain the effective date of the original lease.

R850-20-2300. Lessee Rights.

Lessee rights subject to the following provisions:

1. Mineral exploration, oil and gas drilling, or other operations which disturb the surface of lands contained within or above the mineral lease lands require surface rehabilitation of the disturbed area as approved by the agency, and as required by the laws administered by the Utah Division of Oil, Gas and Mining listed under paragraph (2) of this section.

In all cases, the lessee must agree to slope the sides of all excavations to a ratio not steeper than one foot vertically for each two feet of horizontal distance, unless otherwise approved by the agency prior to commencement of operations. This sloping shall be a concurrent part of the operation of the leased premises to the extent that the operation shall not at any time constitute a hazard. Wherever practicable, all pits or excavations shall be shaped to facilitate drainage and control erosion; and in no case shall the pits or excavations be allowed to become a hazard to persons or livestock. All material mined, but not removed from the premises, shall be used to fill the pits and leveled, unless consent of the agency to do otherwise is obtained, so at the termination of the lease, the land will as nearly as practicable approximate its original configuration. All drill holes must be plugged in accordance with rules promulgated by the Division of Oil, Gas and Mining.

The agency may require that all topsoil in the affected area be removed, stockpiled, and stabilized on the leased premises until the completion of operations. Upon reclamation, the stockpiled topsoil will be redistributed on the affected area and the land revegetated as prescribed by the agency. All mud pits shall be filled and materials and debris removed from the site.

2. All lessees and operators shall comply with the following laws, as appropriate, which are administered by the Utah Division of Oil, Gas and Mining: for oil and gas and related operations, The Oil and Gas Conservation Act (Section 40-6-1 et seq.); for non-coal mining or exploration operations, The Utah Mined Land Reclamation Act (Section 40-8-1 et seq.); and for coal mining or exploration, The Coal Mining Reclamation Act (Section 40-10-1 et seq.).

R850-20-2400. Operations Notification Period.

1. At least 60 days prior to the commencement of mineral exploration, mining or other operations which disturb the surface of lands contained within or above a mineral lease, lessee shall submit plans for operations to the School and Institutional Trust Lands Administration. The agency shall review and make an environmental assessment and endorse or stipulate changes in lessee's plan of operation within the review period. Where feasible, the agency's review shall be conducted concurrently with those of other agencies. Review by another state or federal agency may be accepted by the agency in lieu of a separate agency review. Following review, the agency may require the lessee to adopt a special rehabilitation program required by lessor for the particular property in question. Lessee shall not commence operations upon the land without a plan of operation approved by the agency.

2. Before any operator or lessee shall commence actual drilling operations of any well or prior to commencing any surface disturbance associated with the activity on lands contained within a mineral lease, the operator or lessee shall simultaneously file with the agency a legible copy of the application for permit to drill (APD), as is filed with the Division of Oil, Gas, and Mining.

The agency will review any request for drilling operation and will grant approval, providing that the contemplated location and operations are not in violation of any rules, order, or policy of the School and Institutional Trust Lands Board of Trustees. Agency approval of the application for permit to drill

on mineral resources administered by the School and Institutional Trust Lands Administration is required prior to approval by the Division of Oil, Gas, and Mining. Notice of approval by the School and Institutional Trust Lands Administration will be given in an expeditious manner to the Division of Oil, Gas, and Mining.

3. All lessees or designated operators under mineral leases have responsibility to be aware of notification requirements and operating rules promulgated by the Division of Oil, Gas and Mining with regard to mineral exploration, mining, or oil and gas drilling on lands within the state of Utah. Lessees or operators shall fully comply with all the rules or requirements and provide timely notifications, mine plans, well completion reports, or other information as may be requested.

R850-20-2500. Multiple Mineral Development (MMD) Area Designation.

1. The board may designate any land under its authority as a multiple mineral development area. In designated multiple mineral development areas the board may require, in addition to all other terms and conditions of the mineral lease, that the lessee furnish a bond or evidence of financial responsibility as specified by the board, to assure that the Trust Lands Administration and other mineral lessees shall be indemnified and held harmless from and against unreasonable and all unnecessary damage to mineral deposits or improvements caused by the conduct of the lessee on Trust Lands Administration lands. Written notice shall be given to all mineral lessees holding a mineral lease within the multiple mineral development area. Thereafter, in order to preserve the value of mineral resources the agency may impose any reasonable requirements upon any mineral lessee who intends to conduct any mineral activity within the multiple mineral development area. The lessee is required to submit advance written notice of any activities to occur within the multiple mineral development area to the agency and any other information that the agency may request. All activities within the multiple mineral development area are to be deferred until the agency has specified the terms and conditions under which the mineral activity is to occur and has granted specific permission to conduct the activity. The agency may hold public meetings regarding the mineral development within the multiple mineral development area.

2. The board may grant a mineral lease extension under a multiple mineral development area designation, providing that the mineral lessee or operator requests an extension to the board prior to the lease expiration date, and that the lessee or operator would have otherwise been able to request a lease extension as provided in Section 53C-2-405(4).

R850-20-2600. Term of Mineral Lease.

The term of all mineral leases included in any cooperative or unit plan of oil and gas development or operation in which the agency has joined, or shall hereafter join, shall be extended automatically for the term of the unit or cooperative agreement. Rentals on leases so extended shall be at the rate specified in the lease, subject to the change in rates as may be demanded by the lessor on any lease readjustment date as authorized by the lease.

R850-20-2700. Lease Continuation.

Any lease which shall be eliminated from any such cooperative or unit plan of development or operation, or any lease which shall be in effect at the termination of the cooperative or unit plan of development or operation, unless relinquished, shall continue in effect for the fixed term of the lease, or for two years after its elimination from the plan or agreement or the termination thereof, whichever is longer, and so long thereafter as the leased substances are produced in paying quantities. Rentals under such leases shall continue at the rate specified in the lease.

R850-20-2800. Bonding.

1. Prior to commencement of any operations on a mineral lease, the lessee or designated operator shall post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the lease.

2. The bond required for an oil and gas, geothermal, or minerals exploration project shall be:

(a) a statewide blanket bond in the minimum amount of $80,000 covering exploration operations on all Trust Lands Administration mineral leases held by lessee which shall be in an amount at least equal to the accumulative amount of individual project bonds as set forth below; or

(b) a project bond covering an individual exploration project involving one or more mineral leases. The amount of the project bond will be determined by the agency at the time lessee gives notice of proposed operations. This bond will not be less than $5,000 per acre of surface disturbance, or in the case of an oil and gas or geothermal well:

TABLE

WELL DEPTH	BOND AMOUNT
0- 3,000 ft.	$10,000
3,000-10,000 ft.	20,000
Greater than 10,000 ft.	40,000

3. The bond required for construction and operation of a mine or minerals production plant shall be determined by the agency on basis of an approved mining and reclamation plan or plan of development and operations. This bond may be posted with the Division of Oil, Gas and Mining providing written consent is first obtained from the School and Institutional Trust Lands Administration. Existing project bonds on the same lease(s) may be incorporated into this mine or minerals production plant bond.

4. All bonds posted on mineral leases may be used for payment of all monies, rentals, and royalties, due the Trust Lands Administration as lessor; including:

(a) costs of reclamation, damages to the surface and improvements thereon, and any other costs which arise by operation of the lease and accrue to the lessor.

(b) lessee's compliance with all other terms and conditions of the lease, rules, and policies relating thereto of the Board of Trustees, School and Institutional Trust Lands Administration, Board of Oil, Gas, and Mining, and Division of Oil, Gas, and Mining.

This bond shall be in effect even if the lessee or designated

operator has conveyed all or part of the leasehold interest to a sublessee(s), assignee(s), or subsequent operator(s), until the bond may be released by the lessor, or until the lessee or designated operator fully satisfies the above-described obligations, or until the bond is replaced with a new bond posted by a sublessee, assignee, or new designated operator.

5. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. The Trust Lands Administration will not be responsible for any investment returns on cash deposits.

(c) Certificate of deposit in the name of "School and Institutional Trust Lands Administration and lessee, c/o lessee's address", with an approved state or federally insured banking institution registered in Utah. The certificate of deposit must have a maturity date no greater than 12 months, be automatically renewable, and be deposited with the agency. The lessee will be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the lessee prior to acceptance by the director.

(d) Other forms of surety as may be acceptable to the School and Institutional Trust Lands Administration.

6. Any lessee or designated operator forfeiting a bond is denied approval of any future exploration or mining on Trust Lands Administration lands, except by compensating the Trust Lands Administration for previous defaults and posting the full bond amount estimated for reclamation or lease performance and reclamation on subsequent operations.

7. Bonds may be increased at any time in reasonable amounts as the School and Institutional Trust Lands Administration may order, providing lessor first gives lessee 30 days written notice stating the increase and the reason for the increase.

8. The agency shall waive the filing of a bond for any period during which a bond meeting the requirements of this section is on file with another agency.

R850-20-2900. Mineral Lease Conversion.

1. Oil, gas, and hydrocarbon leases include mineral substances formerly leased by the Trust Lands Administration under at least two separate mineral categories, oil and gas and asphaltic sands - bituminous sands. As to some of the lands, there is presently one or more leases outstanding or covering these mineral categories. It is the intention of the board to effect a gradual conversion of these outstanding leases to a single oil, gas, and hydrocarbon lease form and to effect this conversion in such a way as to not impair or diminish any vested rights, while at the same time attempting to gain the greatest overall return from the management of the Trust Lands Administration lands involved.

2. Where Trust Lands Administration lands are presently covered by either: (1) an asphaltic sands - bituminous sands lease where the oil and gas rights have not been withdrawn from leasing by the order of the board on October 12, 1965; or (2) oil and gas lease issued by the state of Utah, the holder of the lease may upon application and approval by the director, exchange the asphaltic sands - bituminous sands lease or oil and gas lease for an oil, gas, and hydrocarbon lease. The term of the oil, gas, and hydrocarbon lease where an oil and gas lease is converted, is for the remaining term of the oil and gas lease, plus two years. The term of the oil, gas, and hydrocarbon lease where an asphaltic sands - bituminous sands lease is converted is for the remaining term of the lease.

3. Where Trust Lands Administration lands are covered by both oil and gas lease and an asphaltic sands - bituminous sands lease, and one of these leases is cancelled, expires, or is terminated for any reason, then the surviving lessee may exchange his lease for an oil, gas, and hydrocarbon lease. The term of the oil, gas, and hydrocarbon lease, where an oil and gas lease is converted, shall be for the remaining term of the oil and gas lease, plus two years. The term of the oil, gas, and hydrocarbon lease, where an asphaltic sands - bituminous sands lease is converted, shall be for the remaining term of the lease. This conversion right shall expire 60 days from the date of notification of the surviving lessee of his privilege of conversion.

4. Where Trust Lands Administration lands are covered by an oil and gas lease and an asphaltic sands - bituminous sands lease, the board will, on written application, permit a conversion to the oil, gas, and hydrocarbon lease by an applicant who has acquired control of the leasehold rights in the outstanding oil and gas lease and the asphaltic sands - bituminous sands lease.

R850-20-3400. Geothermal Steam Leases.

Geothermal steam resources contained in or under lands of the Trust Lands Administration are reserved to the Trust Lands Administration and shall be sold only upon a lease and royalty basis. Applications shall be made upon forms provided by the agency and shall be subject to all applicable minerals management statutes and rules and the following provisions:

1. Geothermal steam leases are issued only on lands where the Trust Lands Administration owns both the surface and mineral rights, unless lessee agrees to accept as part of his lease agreement the "Addendum to Geothermal Steam Lease and Agreement", adopted by the board on March 20, 1974.

2. Lessee shall file the required bond prior to the commencement of any operations on lands of the Trust Lands Administration.

R850-20-3500. Oil Shale, Bituminous Sands Development--Procedures of Claim.

The first lessee of the Trust Lands Administration to commercially produce oil from oil shale or bituminous sands on lands owned by the Trust Lands Administration is exempted from the payment of any royalty on the first 200,000 barrels of oil commercially produced. To claim this exemption, the lessee shall make a written application to the board for a hearing to determine the validity of lessee's claim. The application shall specify the lease number, location, and type of the production facilities and date on which production commenced, and evidence of marketing agreement to dispose of the oil so produced.

The board shall fix a hearing date within 90 days from the date of filing the application. Notice of the hearing shall be furnished by United States Mail, postage prepaid, to all interested lessees; and notice of the hearing shall be published in a newspaper having general circulation in the state. The

notice shall be furnished, and so published, at least 30 days prior to the hearing. Any other lessee asserting a right to an exemption prior to the applicant's, shall file written notice thereof with the board at least 15 days prior to the hearing and shall serve copies of the notice upon all other lessees asserting a claim. The hearing shall be conducted in accordance with the provisions of R850-8-400 and the board shall enter written findings and an order of exemption.

R850-20-3800. Option To Modify 1981 Form Oil, Gas, and Hydrocarbon Leases.

1. Provided the lessee agrees in writing, any oil, gas, and hydrocarbon lease written on a 1981 form, or any subsequent form with the same minimum royalty requirement, is amended in the following manner:

(a) Under Section 2(d) of the lease the amount of minimum royalty is changed to $1 per acre, if pursuant to Section 2(c) of the lease, diligent operations conducted by the lessee after the expiration of the primary term includes:

i) the actual commencement of drilling operations on all or a portion of the leased premises, or

ii) the commitment by the agency of all or a portion of the leased premises to a pooling, communitization or unit agreement which has been approved by the Trust Lands Administration, and the federal government if federal lands are within the boundaries of the agreement.

(b) A refund of the difference between the amount paid under the original terms of the lease and this amendment will be paid to a lessee who requests the refund in the lease year the amount was due.

(c) At the option of the lessee, the lease shall be converted to a new lease form which the agency shall provide at a later date. Certain provisions of the 1981 form, or any subsequent form with the same minimum royalty requirements, will be clarified under the new form. The rental, royalty, and minimum royalty will not be increased. The change will not affect the ten year primary term of the lease, or the continuation of the lease past the primary term if production royalty is attributable to the leased premises, or if the diligent operations as listed above under Subsection 1.(a)(i) or (ii) are being conducted.

(d) This amendment shall terminate 60 days after the new lease form is offered to the lessee. If the lessee does not elect to take the new lease form the original terms of the lease shall again be in effect.

R850-20-3900. Primary Term of Mineral Leases.

The primary term of oil shale and tar sand leases shall not exceed 20 years. The primary term of all other mineral leases shall not exceed ten years.

R850-20-4000. Readjustment Rule.

1. Any lease, except an oil, gas and hydrocarbon lease, which is subject to a readjustment provision may be readjusted as follows:

(a) Any term or condition of a lease may be readjusted including the rent, royalty, minimum rental, or minimum royalty provisions of the lease.

(b) The agency shall give notice to the lessee at least one year prior to readjustment. Failure to give notice prior to a date a lease is eligible for readjustment shall not waive or prejudice the right of the agency to readjust the lease at a later date.

(c) The readjusted terms shall become effective on the date specified by the agency at the time the readjusted terms are sent to the lessee.

(d) The readjusted terms will conform with the current lease form, at the time of the readjustment, and all existing laws and rules, unless expressly provided otherwise.

(e) Failure of the lessee to accept the terms of any readjustment shall be considered a violation of the provisions of the lease and shall subject the lease to forfeiture.

2. In the event of a conflict between this section and the terms of a readjustment provision in a lease, the lease terms shall supersede to the extent of the conflict.

KEY: royalties, coal, primary term*, administrative procedure

March 3, 1999	**53C-1-302(1)(a)(ii)**
Notice of Continuation June 30, 1997	**53C-2-201(1)(a)**
	53C-2-401(1)(d)(ii)
	53C-2-402(1)
	53C-2-407(4)

R865. Tax Commission, Auditing.
R865-6F. Franchise Tax.
R865-6F-1. Corporation Franchise Privilege - Right to Do Business - Nature of Liability and How Terminated Pursuant to Utah Code Ann. Sections 16-10a-1501 through 16-10a-1522.

A. The Utah franchise tax is imposed upon corporations qualified or incorporated under the laws of Utah, whether or not they do business therein, and also upon corporations doing business in Utah, whether or not they are qualified or incorporated under the laws of Utah.

1. An unqualified foreign corporation doing business in this state is liable for Utah corporation franchise tax in the same amount as if it had duly applied for and received a certificate of authority to transact business in this state pursuant to Section 16-10a-1501.

2. An unqualified foreign corporation deriving income from this state, but not doing business in this state within the contemplation of the Utah corporation franchise tax law is subject to the Utah corporation income tax on income derived from this state under the provisions of Sections 59-7-201 to 59-7-207.

B. If a corporation received its corporate authority to do business in Utah prior to January 1, 1973, and is a member of an affiliated group filing a combined report under Section 59-7-402 or 59-7-403, and legally terminates its corporate authority, it must include its activity during the final year in the combined report of the group. The tax is imposed upon the income of the group rather than the income of the individual corporations.

C. A corporation that was incorporated, qualified, or that reinstated its corporate authority to do business in Utah after January 1, 1973 must file a corporation franchise tax return and pay the tax due with the return for the year in which it legally terminates its right to do business in this state. The Tax Commission shall not issue a tax clearance certificate until the final return has been filed and the amounts due for the final year are paid.

D. For Utah corporation franchise tax purposes, a foreign corporation terminates its corporate existence or the privileges for which the franchise tax is levied (unless it continues to do business) on the date on which:

1. a certificate of withdrawal is issued under the provisions of Section 16-10a-1520;

2. its corporate existence is legally terminated in its home state, provided authoritative evidence of that termination is filed;

3. a certificate of revocation of its authority to transact business in this state is issued under the provisions of Sections 16-10a-1530 and 16-10a-1531; or

4. the corporate powers, rights, and privileges are forfeited under the provisions of Section 59-7-534.

E. For Utah corporation franchise tax purposes, a corporation that is incorporated under the laws of this state terminates its corporate existence or the privilege of exercising its corporate franchise for which the franchise tax is levied on the date on which:

1. a certificate of dissolution is issued pursuant to a voluntary dissolution under the provisions of Section 16-10a-1401 or Sections 16-10a-1402 through 16-10a-1403;

2. a decree of dissolution is entered by the court pursuant to the provisions of Sections 16-10a-1430 through 16-10a-1433;

3. a certificate of merger or of consolidation (which effects the termination of the separate corporate existence of the Utah corporation) is issued pursuant to the provisions of Sections 16-10a-1101 through 16-10a-1107; or

4. the corporate rights and privileges are suspended under the provisions of Section 59-7-534.

F. If the corporation continues to do business in this state subsequent to any of the above dates, it is liable for franchise tax, even though doing business is not authorized, or may even be prohibited, by law. A corporation cannot avoid the franchise tax by doing business without authority which, if legally done, would subject the corporation to the tax.

R865-6F-2. Establishment of Taxable Year and Filing the First Return Pursuant to Utah Code Ann. Sections 59-7-501 and 59-7-505.

A. The period for which a corporation must file its returns for corporation franchise tax purposes is the same period under which its income is computed pursuant to Section 59-7-501.

B. The first return may cover a period of less than 12-calendar months, but may not exceed 12-calendar months. The period must end on the last day of a calendar month, except that the Tax Commission will accept returns being made using the 52-53 week method of reporting under Section 441(f), Internal Revenue Code.

C. If a corporation elects for federal purposes to end its filing period on a date that does not fall on the last day of a calendar month, the filing period for the purposes of effective dates of Utah laws ends on the last day of the month nearest to the federal year end. The Utah net income is computed based on the filing period for federal purposes, notwithstanding the Utah filing period ends on the last day of the month.

D. Except as provided in Section 59-7-505(8)(a), in the case of a domestic corporation, the first return period begins with the date of incorporation. Activity prior to date of incorporation must be reported on individual income or partnership returns or of such other entity as may be appropriate.

E. Except as provided in Section 59-7-505(8)(a), in the case of a foreign corporation, the first return period begins with the date the corporation is qualified to do business in Utah under Title 16, Chapter 10a, Part 15, or the date business within the state is commenced, whichever is the earlier.

R865-6F-6. Application of Corporation Franchise or Income Tax Acts to Qualified Corporations and to Nonqualified Foreign Corporations Pursuant to Utah Code Ann. Section 59-7-104.

A. Definitions.

1. "Ancillary activities" means those activities that serve no independent business function for the seller apart from their connection to the solicitation of orders.

2. "De minimis activities" means those activities that, when taken together, establish only a trivial connection with the taxing state. An activity conducted within Utah on a regular or systematic basis or pursuant to a company policy, whether or not in writing, shall not normally be considered trivial.

3. "In-home office" means an office or place of business located within the residence of the employee or representative of a company that satisfies the following conditions:

a) The office may not be publicly attributed to the company, or to the employee or representative of the company in an employee or representative capacity.

b) The use of the office shall be limited to soliciting and receiving orders from customers; transmitting orders outside the state for acceptance or rejection by the company; or for other activities that are protected under Public Law 86-272, 15 U.S.C. 381-384 (hereafter P.L. 86-272) and this rule.

c) Neither the company nor the employee or representative shall maintain a telephone listing or other public listing for the company within the state, nor use advertising or business literature indicating that the company or its employee or representative can be contacted at a specific address within the state. However, the normal distribution and use of business cards and stationery identifying the employee's or representative's name, address, telephone, and fax numbers and affiliation with the company shall not, by itself, be considered as advertising or otherwise publicly attributing an office to the company or its employee or representative.

4. "Solicitation" means:

a) speech or conduct that explicitly or implicitly invites an order; and

b) activities that neither explicitly nor implicitly invite an order, but are entirely ancillary to requests for an order.

B. Every corporation doing business in Utah whether qualified or not, and every corporation incorporated or qualified in Utah whether or not doing business therein is subject to the Utah corporation franchise tax, unless exempted under the provisions of Section 59-7-102. If liability for the tax exists, the tax must be computed under the provisions of Section 59-7-104, at the rate provided by statute, but in no case shall the tax be less than the minimum tax prescribed.

C. Foreign corporations not qualified in Utah which ship goods to customers in this state from points outside this state, pursuant to orders solicited but not accepted by agents or employees in this state, and which are not doing business in Utah are not taxable under the Utah Corporation Franchise Tax Act if:

1. they maintain no office nor stocks of goods in Utah, and

2. they engage in no other activities in Utah.

D. Foreign corporations not qualified in Utah that make deliveries from stocks of goods located in this state are doing business in this state and are taxable under the Corporation Franchise Tax Act, even though they have no office or regular place of business in this state.

E. Foreign corporations not qualified in Utah are subject to the franchise tax if performing the necessary duties to fulfill contracts or subcontracts in Utah, whether through their own employees or by furnishing of supervisory personnel.

F. Corporations that own real property within this state and rent or lease such properties to others are subject to the franchise tax whether or not qualified under the laws of this state. This also applies to corporations deriving royalty, lease, or rental income from properties located within this state, whether or not such properties are owned by the corporation.

G. Foreign corporations not qualified in Utah are subject to the franchise or income tax if they derive income from revenue-producing properties located in Utah or moving through Utah or from services performed by personnel in this state. This includes, but is not limited to, freight and transportation operations, sales of real property having a Utah situs, leasing or sales of franchises, sporting or entertaining events, etc.

H. Corporations that participate in joint ventures or working and operating agreements which are performed in this state are subject to the franchise tax whether qualified or not.

I. Foreign corporations qualified in Utah are subject to the franchise tax even though engaged solely in interstate commerce.

J. P.L. 86-272 restricts a state from imposing a net income tax on income derived within its borders from interstate commerce if the only business activity of the company within the state consists of the solicitation of orders for sales of tangible personal property, which orders are sent outside the state for acceptance or rejection, and, if accepted, are filled by shipment or delivery from a point outside the state. The term "net income tax" includes a franchise tax measured by net income. If any sales of tangible personal property are made from Utah into a state which is precluded by P.L. 86-272 from taxing the income of the seller, such sales remain subject to throwback to Utah pursuant to Section 59-7-318(2). Similarly, a sale into Utah from another state would not subject a corporation to the Utah tax if the corporation's activities do not exceed those allowed under P.L. 86-272.

1. Only the solicitation to sell personal property is afforded immunity under P.L. 86-272; therefore, the leasing, renting licensing or other disposition of tangible personal property, or transactions involving intangibles such as franchises, patents, copyrights, trade marks, service marks and the like, or any other type of property are not protected activities under P. L. 86-272. The sale or delivery and the solicitation for the sale or delivery of any type of service that is not either (1) ancillary to solicitation, or (2) otherwise set forth as a protected activity below is also not protected under P.L. 86-272 or this rule.

2. For the in-state activity to be a protected activity under P.L. 86-272, it must be limited solely to solicitation, except for de minimis activities and activities conducted by independent contractors as described below.

K. The following in-state activities, assuming they are not of a de minimis level, will constitute doing business in Utah under P.L. 86-272 and will subject the corporation to the Utah corporation franchise tax:

1. making repairs or providing maintenance or service to the property sold or to be sold;

2. collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise;

3. investigating credit worthiness;

4. installation or supervision of installation at or after shipment or delivery;

5. conducting training courses, seminars, or lectures for personnel other than personnel involved only in solicitation;

6. providing any kind of technical assistance or service including engineering assistance or design service, when one of the purposes thereof is other than the facilitation of the

solicitation of orders;

7. investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints when the sole purpose of such mediation is to ingratiate the sales personnel with the customer;

8. approving or accepting orders;

9. repossessing property;

10. securing deposits on sales;

11. picking up or replacing damaged or returned property;

12. hiring, training, or supervising personnel, other than personnel involved only in solicitation;

13. using agency stock checks or any other instrument or process by which sales are made within this state by sales personnel;

14. maintaining a sample or display room in excess of two weeks (14 days) at any one location within the state during the tax year;

15. carrying samples for sale, exchange or distribution in any manner for consideration or other value;

16. owning, leasing, using, or maintaining any of the following facilities or property in-state:

(a) repair shop;

(b) parts department;

(c) any kind of office other than an in-home office;

(d) warehouse;

(e) meeting place for directors, officers, or employees;

(f) stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation;

(g) telephone answering service that is publicly attributed to the company or to employees or agents of the company in their representative status;

(h) mobile stores, i.e., vehicles with drivers who are sales personnel making sales from the vehicles;

(i) real property or fixtures to real property of any kind.

17. consigning stocks of goods or other tangible personal property to any person, including an independent contractor, for sale;

18. maintaining, by either an in-state or an out-of-state resident employee, an office or place of business (in-home or otherwise) of any kind other than an in-home office;

(b) The maintenance of any office or other place of business in this state that does not strictly qualify as an in-home office under this subsection shall, by itself cause the loss of protection under this rule.

(c) For purposes of this subsection it is not relevant whether the company pays directly, indirectly, or not at all for the cost of maintaining the in-home office.

19. entering into franchising of licensing agreements; selling or otherwise disposing of franchises and licenses; or selling or otherwise transferring tangible personal property pursuant to such franchise or license by the franchisor or licensor to its franchisee or licensee within the state;

20. shipping or delivering of goods into this state by means of private vehicle, rail, water, air or other carrier, irrespective of whether a shipment of delivery fee or other charge is imposed, directly or indirectly, upon the purchaser;

21. conducting any activity not listed as a protected activity below which is not entirely ancillary to requests for orders, even if such activity helps to increase purchases.

L. The following in-state activities will not cause the loss of protection for otherwise protected sales;

1. soliciting orders for sales by any type of advertising;

2. soliciting of orders by an in-state resident employee or representative of the company, so long as such person does not maintain or use any office or other place of business in the state other than an in-home office;

3. carrying samples and promotional materials only for display or distribution without charge or other consideration;

4. furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration;

5. providing automobiles to sales personnel for their use in conducting protected activities;

6. passing orders, inquiries and complaints on to the home office;

7. missionary sales activities, i.e. the solicitation of indirect customers for the company's goods. For example, a manufacturer's solicitation of retailers to buy the manufacturer's goods from the manufacturer's wholesale customers would be protected if such solicitation activities are otherwise immune;

8. coordinating shipment or delivery without payment or other consideration and providing information relating thereto either prior or subsequent to the placement of an order;

9. checking of customer's inventories without a charge therefore if performed for reorder, but not for other purposes such as a quality control;

10. maintaining a sample or display room for two weeks (14 days) or less at any one location within the state during the tax year;

11. recruiting, training or evaluating sales personnel, including occasionally using homes, hotels or similar places for meetings with sales personnel;

12. mediating direct customer complaints when the purpose thereof is solely for ingratiating the sales personnel with the customer and facilitating requests for orders;

13. owning, leasing, using or maintaining personal property for use in the employee or representative's in-home office or automobile that is solely limited to the conducting of protected activities. Therefore, the use of personal property such as a cellular telephone, facsimile machine, duplicating equipment, personal computer and computer software that is limited to the carrying on of protected solicitation and activity entirely ancillary to such solicitation or permitted by the provisions of this rule shall not, by itself, remove the protection of P.L. 86-272.

M. P.L. 86-272 provides protection to certain in-state activities if conducted by an independent contractor that would not be afforded if performed by the company or its employees or other representatives.

1. Independent contractors may engage in the following limited activities in the state without the company's loss of immunity;

a) soliciting sales;

b) making sales;

c) maintaining an office.

2. Sales representatives who represent a single principal are not considered to be independent contractors and are subject to the same limitations as those provided under P.L. 86-272 and

this rule.

3. Maintenance of stock of goods in the state by the independent contractor under consignment or any other type of arrangement with the company, except for purposes of display and solicitation, shall remove the protection.

N. The Tax Commission will apply the provisions of P.L. 86-272 and of this rule to business activities conducted in foreign commerce. Therefore, whether business activities are conducted by (i) a foreign or domestic company selling tangible personal property into a county outside of the United States from a point within this state or by (ii) either company selling such property into this state from a point outside of the United States, the principles under this rule apply equally to determine whether the sales transactions are protected and the company immune from taxation in either this state or in the foreign county, as the case might be, and whether, if applicable, the throwback provisions of Section 59-7-318(2) will apply.

O. The protection afforded by P.L. 86-272 and the provisions of this rule do not apply to any corporation that is incorporated or domiciled in this state.

P. A company that registers or otherwise formally qualifies to do business within this state does not, by that fact alone, lose its protection under P.L. 86-272. Where, separate from or ancillary to such registration or qualification, the company receives and seeks to use or protect any additional benefit or protection from this state through activity not otherwise protected under P.L. 86-272 or this rule, such protection shall be removed.

Q. The protection afforded under P.L. 86-272 and the provisions of this rule shall be determined on a year by year tax basis. Therefore, if at any time during a tax year the company conducts activities that are not protected under P.L. 86-272 or this rule, no sales in this state or income earned by the company attributed to this state during any part of said tax year shall be protected from taxation for purposes of the corporate franchise tax.

R865-6F-8. Allocation and Apportionment of Net Income (Uniform Division of Income for Tax Purposes Act) Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

A. Business and Nonbusiness Income Defined. Section 59-7-302 defines business income as income arising from transactions and activity in the regular course of the taxpayer's trade or business operations. In essence, all income that arises from the conduct of trade or business operations of a taxpayer is business income. For purposes of administration of the Uniform Division of Income for Tax Purposes Act (UDITPA), the income of the taxpayer is business income unless clearly classifiable as nonbusiness income.

1. Nonbusiness income means all income other than business income and shall be narrowly construed.

2. The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, and nonoperating income, is of no aid in determining whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is business income or nonbusiness income is the identification of the transactions and activity that are the elements of a particular trade or business. In general, all transactions and activities of the taxpayer that are dependent upon or contribute to the operation of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and will be transactions and activity arising in the regular course of business, and will constitute integral parts of a trade or business.

3. Business and Nonbusiness Income. Application of Definitions. The following are rules for determining whether particular income is business or nonbusiness income:

a) Rents from real and tangible personal property. Rental income from real and tangible property is business income if the property with respect to which the rental income was received is used in the taxpayer's trade or business or is incidental thereto and therefore is includable in the property factor under G.1.a).

b) Gains or Losses from Sales of Assets. Gain or loss from the sale, exchange or other disposition of real or tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in the taxpayer's trade or business. However, if the property was utilized for the production of nonbusiness income the gain or loss will constitute nonbusiness income. See G.1.b).

c) Interest. Interest income is business income where the intangible with respect to which the interest was received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the intangible is related to or incidental to trade or business operations.

d) Dividends. Dividends are business income where the stock with respect to which the dividends are received arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the stock is related to or incidental to the trade or business operations. Because of the regularity with which most corporate taxpayers engage in investment activities, because the source of capital for those investments arises in the ordinary course of a taxpayer's business, because the income from those investments is utilized in the ordinary course of the taxpayer's business and because those investment assets are used for general credit purposes, income arising from the ownership or sale or other disposition of investments is presumptively business income. This presumption may be rebutted if the taxpayer can prove that the investment is unrelated to the regular trade or business activities.

e) Proration of Deductions. In most cases an allowable deduction of a taxpayer will be applicable only to the business income arising from the trade or business or to a particular item of nonbusiness income. In some cases an allowable deduction may be applicable to the business income and to nonbusiness income. In those cases the deduction shall be prorated among the business and nonbusiness income in a manner that fairly distributes the deduction among the classes of income to which it is applicable.

f) A schedule must be submitted with the return showing:

(1) the gross income from each class of income being allocated;

(2) the amount of each class of applicable expenses,

together with explanation or computations showing how amounts were arrived at;

(3) the total amount of the applicable expenses for each income class; and

(4) the net income of each income class. The schedules should provide appropriate columns as set forth above for items allocated to this state and for items allocated outside this state.

g) In filing returns with this state, if the taxpayer departs from or modifies the manner of prorating any such deduction used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

h) If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the application or proration of any deduction, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

B. Definitions.

1. "Taxpayer," for purposes of this rule, is as defined in Section 59-7-101.

2. "Apportionment" means the division of business income between states by the use of a formula containing apportionment factors.

3. "Allocation" means the assignment of nonbusiness income to a particular state.

4. "Business activity" refers to the transactions and activity occurring in the regular course of the trade or business of a taxpayer.

C. Apportionment.

1. If the business activity with respect to the trade or business of a taxpayer occurs both within and without this state, and if by reason of that business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from the trade or business derived from sources within this state shall be determined by apportionment in accordance with Sections 59-7-311 to 59-7-319.

2. Allocation. Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its nonbusiness income or loss within or without this state in accordance with Sections 59-7-306 to 59-7-310.

D. Consistency and Uniformity in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under UDITPA are not uniform in the classification of income as business or nonbusiness income, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

E. Taxable in Another State.

1. In General. Under Section 59-7-303 the taxpayer is subject to the allocation and apportionment provisions of UDITPA if it has income from business activity that is taxable both within and without this state. A taxpayer's income from business activity is taxable without this state if the taxpayer, by reason of business activity (i.e., the transactions and activity occurring in the regular course of the trade or business), is taxable in another state within the meaning of Section 59-7-305. A taxpayer is taxable within another state if it meets either one of two tests:

a) if by reason of business activity in another state the taxpayer is subject to one of the types of taxes specified in Section 59-7-305(1), namely: a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

b) if by reason of business activity another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether the state imposes that tax on the taxpayer. A taxpayer is not taxable in another state with respect to the trade or business merely because the taxpayer conducts activities in that state pertaining to the production of nonbusiness income.

2. When a Taxpayer Is Subject to a Tax Under Section 59-7-305. A taxpayer is subject to one of the taxes specified in Section 59-7-305(1) if it carries on business activity in a state and that state imposes such a tax thereon. Any taxpayer that asserts that it is subject to one of the taxes specified in Section 59-7-305(1) in another state shall furnish to the Tax Commission, upon its request, evidence to support that assertion. The Tax Commission may request that the evidence include proof that the taxpayer has filed the requisite tax return in the other state and has paid any taxes imposed under the law of the other state. The taxpayer's failure to produce that proof may be taken into account in determining whether the taxpayer is subject to one of the taxes specified in Section 59-7-305(1) in the other state. If the taxpayer voluntarily files and pays one or more taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization, or for the privilege of doing business in that state, but

a) does not actually engage in business activity in that state, or

b) does actually engage in some business activity, not sufficient for nexus, and the minimum tax bears no relation to the taxpayer's business activity within that state, the taxpayer is not subject to one of the taxes specified within the meaning of Section 59-7-305(1).

3. When a State Has Jurisdiction to Subject a Taxpayer to a Net Income Tax. The second test, that of Section 59-7-305(2), applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of business activity under the Constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U. S. C. A. Sec. 381-385 (P.L. 86-272). In the case of any state as defined in Section 59-7-302(6), other than a state of the United States or political subdivision of a state, the determination of whether a state has jurisdiction to subject the taxpayer to a net income tax shall be made as though the jurisdictional standards applicable to a state of the United States applied in that state. If jurisdiction is otherwise present, the state is not considered as without jurisdiction by reason of the provisions of a treaty between that state and the United States.

F. Apportionment Formula. All business income of the taxpayer shall be apportioned to this state by use of the apportionment formula set forth in Section 59-7-311. The elements of the apportionment formula are the property factor,

see G. below, the payroll factor, see H. below, and the sales factor, see I. below, of the trade or business of the taxpayer. For exceptions see J. below.

G. Property Factor.

1. In General.

a) The property factor of the apportionment formula shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of its trade or business. Real and tangible personal property includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency.

b) Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of the taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the property is used in the regular course of the taxpayer's trade or business. The method of determining the portion of the value to be included in the factor will depend upon the facts of each case.

c) The property factor shall reflect the average value of property includable in the factor. Refer to G.6.

2. Property Used for the Production of Business Income. Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period, except inventoriable goods in process, shall be excluded from the factor until the property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor.

3. Consistency in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the valuation of property and in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

4. Numerator. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the trade or business of the taxpayer. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller that is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment that are located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

5. Valuation of Owned Property.

a) Property owned by the taxpayer shall be valued at its original cost. As a general rule original cost is deemed to be the basis of the property for state franchise or income tax purposes (prior to any adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reasons including sale, exchange, and abandonment. However, capitalized intangible drilling and development costs shall be included in the property factor whether or not they have been expensed for either federal or state tax purposes.

b) Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for state tax purposes.

c) Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation.

6. Valuation of Rented Property.

a) Property rented by the taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for the property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. See J.2. for special rules where the use of the net annual rental rate produces a negative or clearly inaccurate value or where property is used by the taxpayer at no charge or rented at a nominal rental rate.

b) Subrents are not deducted when the subrents constitute business income because the property that produces the subrents is used in the regular course of the trade or business of the taxpayer when it is producing the income. Accordingly there is no reduction in its value.

c) Annual rental rate is the amount paid as rental for property for a 12-month period; i.e., the amount of the annual rent. Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the annual rental rate for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month to month basis.

d) Annual rent is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

(1) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or

otherwise.

(2) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items that are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, and janitor services. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and other items.

e) Annual rent does not include:

(1) incidental day-to-day expenses such as hotel or motel accommodations, or daily rental of automobiles;

(2) royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from that property, irrespective of the method of payment or how that consideration may be characterized, whether as a royalty, advance royalty, rental, or otherwise.

f) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.

7. Averaging Property Values. As a general rule, the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and end of the tax period. However, the Tax Commission may require or allow averaging by monthly values if that method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period.

a) Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

b) Example: The monthly value of the taxpayer's property was as follows:

TABLE

January	$ 2,000
February	2,000
March	3,000
April	3,500
May	4,500
June	10,000
July	15,000
August	17,000
September	23,000
October	25,000
November	13,000
December	2,000
Total	$120,000

The average value of the taxpayer's property includable in the property factor for the income year is determined as follows:

$120,000 / 12 = $10,000

c) Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of the property as set forth in G.6.a).

H. Payroll Factor.

1. The payroll factor of the apportionment formula shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.

2. The total amount paid to employees is determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report compensation under that method for unemployment compensation purposes. The compensation of any employee on account of activities that are connected with the production of nonbusiness income shall be excluded from the factor.

3. The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services.

a) The term "employee" means:

(1) any officer of a corporation; or

(2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act. However, since certain individuals are included within the term employees in the Federal Insurance Contributions Act who would not be employees under the usual common law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this rule.

b) In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(1) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the treatment of compensation paid, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

4. Denominator. The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by P.L. 86-272, are included in the denominator of the payroll factor.

5. Numerator. The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in Section 59-7-316 to be applied in determining whether compensation is paid in this

state are derived from the Model Unemployment Compensation Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report compensation under that method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitute compensation paid in this state except for compensation excluded under H. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

6. Compensation Paid in this State. Compensation is paid in this state if any one of the following tests applied consecutively are met:

a) The employee's service is performed entirely within the state.

b) The employee's service is performed entirely within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word incidental means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

c) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(1) if the employee's base of operations is in this state; or

(2) if there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or

(3) if the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.

d) The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points. The term "place from which the service is directed or controlled" means the place from which the power to direct or control is exercised by the taxpayer.

I. Sales Factor. In General.

1. Section 59-7-302(5) defines the term "sales" to mean all gross receipts of the taxpayer not allocated under Section 59-7-306 through 59-7-310. Thus, for purposes of the sales factor of the apportionment formula for the trade or business of the taxpayer, the term sales means all gross receipts derived by the taxpayer from transactions and activity in the regular course of the trade or business. The following are rules determining sales in various situations.

a) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, sales includes all gross receipts from the sales of goods or products (or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to sales. Federal and state excise taxes (including sales taxes) shall be included as part of receipts if taxes are passed on to the buyer or included as part of the selling price of the product.

b) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, sales includes the entire reimbursed cost, plus the fee.

c) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, or research and development contracts, sales includes the gross receipts from the performance of services including fees, commissions, and similar items.

d) In the case of a taxpayer engaged in renting real or tangible property, sales includes the gross receipts from the rental, lease or licensing of the use of the property.

e) In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, sales includes the gross receipts therefrom.

f) If a taxpayer derives receipts from the sale of equipment used in its business, those receipts constitute sales. For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

g) In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business. See J.3.

h) In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

i) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

2. Denominator. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under J.3.

3. Numerator. The numerator of the sales factor shall include gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

4. Sales of Tangible Personal Property in this State.

a) Gross receipts from the sales of tangible personal property (except sales to the United States government; see I.5.) are in this state:

(1) if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale; or

(2) if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

b) Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

c) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

d) The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

e) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

f) If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.

g) If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply:

(1) If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in that state.

(2) If the taxpayer is not taxable in the state from which the property is shipped, the sale is in this state.

5. Sales of Tangible Personal Property to United States Government in this state.

a) Gross receipts from the sales of tangible personal property to the United States government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For purposes of this rule, only sales for which the United States government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States government, do not constitute sales to the United States government.

6. Sales Other than Sales of Tangible Personal Property in this State.

a) In general, Section 59-7-319(1) provides for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property (including transactions with the United States government). Under Section 59-7-319(1), gross receipts are attributed to this state if the income producing activity that gave rise to the receipts is performed wholly within this state. Also, gross receipts are attributed to this state if, with respect to a particular item of income, the income producing activity is performed within and without this state but the greater proportion of the income producing activity is performed in this state, based on costs of performance.

b) The term "income producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Income producing activity does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, the income producing activity includes the following:

(1) the rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service;

(2) the sale, rental, leasing, or licensing or other use of real property;

(3) the rental, leasing, licensing or other use of intangible personal property; or

(4) the sale, licensing or other use of intangible personal property. The mere holding of intangible personal property is not, of itself, an income producing activity.

c) The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

d) Receipts (other than from sales of tangible personal property) in respect to a particular income producing activity are in this state if:

(1) the income producing activity is performed wholly within this state; or

(2) the income producing activity is performed both in and outside this state and a greater proportion of the income producing activity is performed in this state than in any other state, based on costs of performance.

e) The following are special rules for determining when receipts from the income producing activities described below are in this state:

(1) Gross receipts from the sale, lease, rental or licensing of real property are in this state if the real property is located in this state.

(2) Gross receipts from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state. The rental, lease, licensing or other use of tangible personal property in this state is a separate income producing activity from the rental, lease, licensing or other use of the same property while located in another state. Consequently, if the property is within and without this state during the rental, lease or licensing period, gross receipts attributable to this state shall be measured by the ratio that the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during the period.

(3) Gross receipts for the performance of personal services are attributable to this state to the extent services are performed in this state. If services relating to a single item of income are performed partly within and partly without this state, the gross receipts for the performance of services shall be attributable to this state only if a greater portion of the services were performed in this state, based on costs of performance. Usually where services are performed partly within and partly without this state, the services performed in each state will constitute a

separate income producing activity. In that case, the gross receipts for the performance of services attributable to this state shall be measured by the ratio that the time spent in performing services in this state bears to the total time spent in performing services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation that gives rise to gross receipts. Personal service not directly connected with the performance of the contract or other obligations, as for example, time expended in negotiating the contract, is excluded from the computations.

J. Special Rules:

1. Section 59-7-320 provides that if the allocation and apportionment provisions of UDITPA do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

a) separate accounting;

b) the exclusion of any one or more of the factors;

c) the inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in this state; or

d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

2. Property Factor.

The following special rules are established in respect to the property factor of the apportionment formula:

a) If the subrents taken into account in determining the net annual rental rate under G.6.b) produce a negative or clearly inaccurate value for any item of property, another method that will properly reflect the value of rented property may be required by the Tax Commission or requested by the taxpayer. In no case however, shall the value be less than an amount that bears the same ratio to the annual rental rate paid by the taxpayer for property as the fair market value of that portion of property used by the taxpayer bears to the total fair market value of the rented property.

b) If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for the property shall be determined on the basis of a reasonable market rental rate for that property.

3. Sales Factors.

The following special rules are established in respect to the sales factor of the apportionment formula:

a) Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, those gross receipts shall be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded.

b) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless exclusion would materially affect the amount of income apportioned to this state. For example, the taxpayer ordinarily may include or exclude from the sales factor gross receipts from such transactions as the sale of office furniture, and business automobiles.

c) Where the income producing activity in respect to business income from intangible personal property can be readily identified, that income is included in the denominator of the sales factor and, if the income producing activity occurs in this state, in the numerator of the sales factor as well. For example, usually the income producing activity can be readily identified in respect to interest income received on deferred payments on sales of tangible property, see I.1.a), and income from the sale, licensing or other use of intangible personal property, see I.6.b)(4).

(1) Where business income from intangible property cannot readily be attributed to any particular income producing activity of the taxpayer, the income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor. For example, where business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, such dividends and interest shall be excluded from the denominator of the sales factor.

(2) Exclude from the denominator of the sales factor, receipts from the sales of securities unless the taxpayer is a dealer therein.

4. Domestic International Sales Corporation (DISC). In any case in which a corporation, subject to the income tax jurisdiction of Utah, owns 50 percent or more of the voting power of the stock of a corporation classified as a DISC under the provisions of Sec. 992 Internal Revenue Code, a combined filing with the DISC corporation is required.

5. Partnership or Joint Venture Income. Income or loss from partnership or joint venture interests shall be included in income and apportioned to Utah through application of the three-factor formula consisting of property, payroll and sales. For apportionment purposes, the portion of partnership or joint venture property, payroll and sales to be included in the corporation's property, payroll and sales factors shall be computed on the basis of the corporation's ownership interest in the partnership or joint venture, and otherwise in accordance with other applicable provisions of this rule.

R865-6F-14. Extent to Which Federal Income Tax Provisions Are Followed for Corporation Franchise Tax Purposes Pursuant to Utah Code Ann. Sections 59-7-106, 59-7-108, 59-7-118, and 59-7-121.

A. It is the policy of the Tax Commission, in matters involving the determination of net income for Utah corporation franchise tax purposes, to follow as closely as possible federal requirements with respect to the same matters. In some instances, of course, the federal and state statutes differ; and due to such conflict, the federal rulings, regulations, and decisions cannot be followed. Furthermore, in some instances, the Tax Commission may disagree with the federal determinations and does not consider them controlling for Utah corporation franchise tax purposes.

1. The items of major importance ordinarily allowed in conformity with federal requirements are:

a. depreciation (see rule R865-6F-9),

b. depletion,

c. exploration and development expenses,

d. intangible drilling costs,

e. accounting methods and periods (see rule R865-6F-2),

and

f. Subpart F income.

2. The following are the major items which require different treatment under the state and federal statutes:

a. installment sales (see rule R865-6F-15),

b. consolidated returns (see rule R865-6F-4),

c. liquidating dividends,

d. municipal bond interest,

e. capital loss deduction,

f. loss carry-overs and carry-backs, and

g. gross-up on foreign dividends.

Note: The only reserves permitted in determining net-income for Utah corporation franchise tax purposes are depreciation, depletion, and bad debts.

R865-6F-15. Installment Basis of Reporting Income in Year of Termination Pursuant to Utah Code Ann. Section 59-7-119.

A. The Corporation Franchise Tax Act allows a corporation, under certain conditions and under rules prescribed by the Tax Commission, to report income arising from the sale or other disposition of property on a deferred or so-called installment basis. Thus, a gain technically realized at the time the sale is made may, at the election of the taxpayer, be reported on a deferred basis in accordance with the law and the following sections of this rule. The rule allowing deferment of reporting such income is only one of postponement of the tax, and not one of exemption from a tax otherwise lawfully due. Thus, the privilege of deferment is terminated if the taxpayer ceases to be subject to tax prior to the reporting of the entire amount of installment income. When a taxpayer elects to report income arising from the sale or other disposition of property as provided in Utah Code Ann. Section 59-7-119, and the entire income therefrom has not been reported prior to the year that the taxpayer ceases to be subject to the tax imposed under the Utah Corporation Income and Franchise Tax Acts, the unreported income is included in the return for the last year in which the taxpayer is subject to the tax. This rule applies to all corporations which elect to report on the installment basis. If a corporation on this basis desires to dissolve or to withdraw, it must comply with the provisions hereof prior to issuance of the tax clearance certificate.

B. Income reported under the provisions of Utah Code Ann. Section 59-7-119 and this rule shall be subject to the same treatment in the allocation of income; i.e., specific allocation or apportionment, as would have been accorded the original income from the sale under the provisions of the Uniform Division of Income for Tax Purposes Act. In case such income is subject to apportionment, the apportionment fraction for the year in which the income is reported applies rather than the year in which the sale was made.

R865-6F-16. Apportionment of Income of Long-Term Construction Contractors Pursuant to Utah Code Ann. Section 59-7-118.

A. When a taxpayer elects to use the percentage-of-completion method of accounting, or the completed contract method of accounting for long-term contracts, and has income from sources both within and without this state, the amount of business income derived from such long-term contracts from sources within this state is determined pursuant to this rule.

B. Business income is apportioned to this state by a three-factor formula consisting of property, payroll, and sales--regardless of the method of accounting for long-term contracts elected by the taxpayer. The total of the property, payroll, and sales percentages is divided by three to determine the apportionment percentage. The apportionment percentage is then applied to business income to determine the amount apportioned to this state.

1. Percentage-of-completion method. Under this method of accounting for long-term contracts, the amount included each year as business income from each contract is the amount by which the gross contract price (which corresponds to the percentage of the entire contract completed during the income years) exceeds all expenditures made during the income year in connection with the contract. Beginning and ending material and supplies inventories must be appropriately accounted for in reporting expenditures.

2. Completed-contract method. Under this method of accounting, business income derived from long-term contracts is reported for the income year in which the contract is completed. A special computation is required to compute the amount of business income attributable to this state from each completed contract. All receipts and expenditures applicable to the contracts, whether complete or incomplete at the end of the income year, are excluded from other business income, which are apportioned by the regular three-factor formula of property, payroll, and sales.

C. Property factor. In general, the numerator and denominator of the property factor is determined as set forth in Utah Code Ann. Sections 59-7-312, 59-7-313, and 59-7-314 and the rules thereunder. However, the following special rules are also applicable:

1. The average value of the taxpayer's cost (including materials and labor) of construction in progress, to the extent these costs exceed progress billings, are included in the denominator of the property factor. The value of those construction costs attributable to construction projects in this state are included in the numerator of the property factor. It may be necessary to use monthly averages if yearly averages do not properly reflect the average value of the taxpayer's equity.

2. Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight times the net annual rental rate, even though the rental expense may be capitalized into the cost of construction.

3. The property factor is computed in the same manner for all long-term-contract methods of accounting and is computed for each income year, even though under the completed-contract method of accounting business income is computed separately.

D. Payroll factor. In general, the numerator and denominator of the payroll factor are determined as set forth in Utah Code Ann. Sections 59-7-315 and 59-7-316 and the rules thereunder. However, the following special rules are also applicable.

1. Compensation paid to employees attributable to a particular construction project is included in the payroll factor even though capitalized into the cost of construction.

2. Compensation paid to employees who, in the aggregate,

perform most of their services in a state to which their employer does not report them for unemployment tax purposes, is attributed to the state where the services are performed. For example, a taxpayer engaged in a long-term contract in State X sends several key employees to that state to supervise the project. The taxpayer, for unemployment tax purposes reports these employees to State Y where the main office is maintained and where the employees reside. For payroll factor purposes and in accordance with Utah Code Ann. Section 59-7-316 and the rule thereunder, the compensation is assigned to the numerator of State X.

3. The payroll factor is computed in the same manner for all long-term-contract methods of accounting and is computed for each income year, even though under the completed contract method of accounting, business income is computed separately.

E. Sales Factor. In general, the numerator and denominator of the sales factor shall be determined as set forth in Utah Code Ann. Sections 59-7-317, 59-7-318, and 59-7-319 and the rules thereunder. However, the following special rules are also applicable.

1. Gross receipts derived from the performance of a contract are attributable to this state if the construction project is located in this state. If the construction project is located partly within and partly without this state, the gross receipts attributable to this state are based upon the ratio which construction costs for the project in this state incurred during the coming year bears to the total of such construction costs for the entire project during the income year. Progress billings are ordinarily used to reflect gross receipts and must be shown in both the numerator and denominator of the sales factor.

2. If the percentage-of-completion method is used, the sales factor includes only that portion of the gross contract price which corresponds to the percentage of the entire contract which was completed during the income year. For example, a construction contractor which had elected the percentage-of-completion method of accounting entered into a $9,000,000 long-term construction contract. At the end of its current income year (the second since starting the project) it estimated that the project was 30 percent completed. The amount of gross receipts included in the sales factor for the current income year is $2,700,000 (30 percent of $9,000,000), regardless of whether the taxpayer uses the accrual method or the cash method of accounting for receipts and disbursements.

3. If the completed-contract method of accounting is used, the sales factor includes the portion of the gross receipts (progress billings) received under the cash basis or accrued, whichever is applicable, during the income year attributable to each contract. For example, a construction contractor which elected the completed-contract method of accounting entered into a long-term construction contract. At the end of its current income year (the second since starting the project) it had billed, and accrued on its books a total of $5,000,000 of which $2,000,000 had accrued in the first year the contract was undertaken, and $3,000,000 in the current (second) year. The amount of gross receipts included in the sales factor for the current income year is $3,000,000. If the taxpayer keeps its books on the cash basis, and as of the end of its current income year has received only $2,500,000 of the $3,000,000 billed during the current year, the amount of gross receipts to be included in the sales factor for the current year is $2,500,000.

4. The sales factor, except as noted above in subparagraphs 2. and 3., is computed in the same manner for all long-term contract methods of accounting and is computed for each income year--even though under the completed-contract method of accounting, business income is computed separately.

F. The total of the property, payroll, and sales percentages is divided by three to determine the apportionment percentage which is then applied to business income to establish the amount apportioned to this state.

G. The completed-contract method of accounting provides that the reporting of income (or loss) is deferred until the year the construction project is completed. In order to determine the amount of income which is attributable to sources within this state, a separate computation is made for each contract completed during the income year, regardless of whether the project is located within or without this state. The amount of income from each contract completed during the income year apportioned to this state is added to other business income apportioned to this state by the regular three-factor formula, and that total together with all nonbusiness income allocated to this state becomes the measure of tax for the income year. The amount of income (or loss) from each contract which is derived from sources within this state using the completed-contract method of accounting is computed as follows.

1. In the income year the contract is completed, the income (or loss) therefrom is determined.

2. The income (or loss) determined at Paragraph G.1. is apportioned to this state by the following method:

(a) a fraction is determined for each year the contract was in progress (the numerator of which is the amount of construction costs paid or accrued each year the contract was in progress, and the denominator of which is the total of all construction costs for the project);

(b) each percentage determined in (a) is multiplied by the apportionment formula percentage for that particular year;

(c) these factors are totaled; and

(d) the total income is multiplied by this combined percentage, and the resulting income (or loss) is the amount of contract business income assigned to this state.

3. A corporation using the completed-contract method of accounting is required to include income derived from sources within this state from contracts within or without this state or income from incomplete contracts in progress outside this state in the year of withdrawal, dissolution, or cessation of business pursuant to Paragraph G.4.

4. The amount of income (or loss) from each such contract apportioned to this state is determined as if the percentage-of-completion method of accounting were used for all such contracts on the date of withdrawal, dissolution, or cessation of business. The amount of business income (or loss) for each such contract is the amount by which the gross contract price from each such contract from the commencement thereof to the date of withdrawal, dissolution, or cessation of business exceeds all expenditures made during such period in connection with each such contract. Beginning and ending material and supplies inventories must be appropriately accounted for in reporting expenditures in connection with each contract.

R865-6F-18. Corporations Exempt From The Franchise Tax Pursuant to Utah Code Ann. Section 59-7-105.

A. Corporations incorporated or qualified in Utah under the Nonprofit Corporation Act are taxable unless a valid Utah corporation franchise exemption is obtained. A corporation must be engaged in or organized to engage in one of the exempt categories provided in the Utah law in order to be eligible for exemption from Utah corporation franchise tax. In some instances, Utah exempt provisions are the same as those contained in federal law. Corporations that obtain a valid Utah exempt ruling are not required to file Utah corporation franchise tax returns (Form TC-20) nor pay Utah corporation franchise taxes, except as noted in Paragraph B, of this rule.

B. Corporations which meet the requirements of Section 501(c), as amended, of the Internal Revenue Code are exempt from the franchise tax. However, if an exempt corporation becomes subject to federal income tax, it must make a full disclosure of the items and amounts which have become subject to federal tax for a redetermination of its taxable status for Utah corporation franchise tax purposes.

1. The federal exempt ruling is used as the basis for determining Utah exemption, provided a copy of the ruling is submitted with a written request for Utah corporation franchise tax exemption.

2. The Tax Commission replies in writing to the written request.

C. If Utah law provides for exemption but federal law does not, the Tax Commission makes an exception upon receipt of a written request from corporations such as:

1. Homeowner associations not organized for profit, which are organized to maintain or operate common areas or facilities. (Corporations such as time share, recreation property, and business property associations formed to maintain common areas are not exempt.)

2. Holding companies are generally exempt from Corporation Franchise Tax under the provisions of Utah Code Ann. Section 59-7-105(c). However, several conditions must be met before the exemption applies. These conditions are as follows.

(a) Each of its subsidiary corporations required by Utah Code Ann. Section 59-7-102 to pay tax for the privilege of exercising its corporate franchise or for the privilege of doing business in the state must make the returns required by Utah Code Ann. Title 59, Chapter 7. For purposes of the foregoing, a corporation is a subsidiary of a second corporation if such second corporation owns, either directly or indirectly, more than 50 percent of the outstanding stock of any class of stock of the subsidiary and is entitled to vote in the election of directors of the subsidiary.

(b) The activities of such corporation are limited so as to be only such as are incidental to the business of holding stock of other corporations for the purpose of controlling the management of affairs of such other corporations (the controlled corporation being referred to herein as subsidiary corporation). By way of illustration and not limitation, such activities may include the following:

(1) acquiring and holding shares, stocks, debentures, debenture stock, bonds, obligations, and securities issued by its subsidiary corporations;

(2) acquiring and holding stock and securities of another corporation for the purpose of acquiring control of such other corporation;

(3) charging its subsidiary corporations management fees for furnishing management, accounting, and other services;

(4) borrowing from and lending money to its subsidiary corporations, endorsing or otherwise guaranteeing obligations of its subsidiary corporations, and guaranteeing contractual or other performance obligations of its subsidiary corporations;

(5) having interlocking directors and officers between such corporation and its subsidiary corporations;

(6) monitoring and supervising the plans, methods, and operations of its subsidiary corporations;

(7) retaining and temporarily investing funds held for purposes incident to the management of affairs of its subsidiary corporations; provided, however, that such investments are handled in a manner so that any net income derived from investment of such funds is allocated so as to be included for purposes of the Utah corporation franchise tax in the income of the subsidiary corporations;

(8) the holding company may for its own use enter agreements concerning constructing, leasing, purchasing, holding, mortgaging or otherwise encumbering, and selling such real property as may be necessary or appropriate to the management of affairs of its subsidiary corporations; and

(9) employing persons and owning, leasing, or otherwise holding such personal property as may be necessary or appropriate to the management of affairs of its subsidiary corporations.

(c) The articles of association or incorporation of such corporation must limit the exercise of the corporation's franchise to those activities permitted under Paragraph C.2.b. of this rule.

(d) Unless permitted under Paragraph C.2 of this rule, any holding company claiming to be exempt from the Utah corporation franchise tax shall not carry on or undertake any business, undertakings, transactions, or operation commonly carried on or undertaken by capitalists, promoters, financiers, contractors, merchants, commercial men, or agents; nor carry on or undertake any investment or insurance business, or any business of any kind.

(e) The exemption applies only during that portion of a corporation's taxable year when these conditions are met. During any portion of its taxable year when a corporation does not meet all of the requirements, the corporation is subject to the tax imposed by Utah Code Ann. Section 59-7-102 based on such corporation's net income during the nonexempt portion of its taxable year. If a corporation, exempt for all or a portion of a taxable year, loses its exemption for such year, it may again be exempt by remedying the defect or defects and once again complying with all of the conditions and requirements. However, the exemption thus reestablished does not apply until the first day of the corporation's taxable year following the reestablishment of the exemption.

(f) Proof of Exemption. In order to establish its exemption under Paragraph C, each corporation claiming exemption must file with the Tax Commission:

(1) an affidavit showing the character of the corporation, the purpose for which it is organized, the nature of its activities, all of its subsidiary corporations and its subsidiary corporations

which are subject to the Utah corporate franchise tax; and

(2) a copy of its article of association or incorporation.

(i) The foregoing filing must be made by what would otherwise be the due date of the corporation's franchise tax return for the first year for which exemption is claimed. When a corporation has established its right to exemption, it need not thereafter voluntarily make a return or any further showing with respect to its status unless it changes the character of its organization or operations from the purpose for which it is organized, or unless the Tax Commission requests the filing of returns or the furnishing of other information. Copies of supplemental or amended articles of association or incorporation should be forwarded promptly to the Tax Commission for study as to the effect upon exemption. The Tax Commission may, from time to time, require the corporation to file an affidavit, or a form which will reveal the corporation's current status.

(g) This rule is not intended to in any way limit the authority and power of the Tax Commission (pursuant to Utah Code Ann. Section 59-7-120) to distribute, apportion, or allocate gross income or deductions between or among the corporations specified in Utah Code Ann. Section 59-7-120, if the Tax Commission determines that such distribution, apportionment or allocation is necessary in order to prevent evasion of Utah corporate franchise taxes or to clearly reflect the Utah taxable income of any of such corporations. If the Tax Commission determines, as part of its exercise of the foregoing power, that the deduction for an intercompany transfer is unreasonable in nature or amount, the Tax Commission may deny a deduction for the unreasonable portion in order to prevent evasion of Utah corporate franchise taxes or clearly reflect the Utah taxable income of the transfer corporation. Furthermore, this rule in no way prohibits the Tax Commission from determining if a holding company is conducting a unitary business with any or all of its subsidiaries for the purpose of determining the amount of net income attributable to Utah from the entire unitary business operations. Exercise by the Tax Commission of its authority and power contained in this paragraph is not evidence that the corporation has failed to meet all of the requirements of this section.

3. Insurance companies which are required to pay Utah insurance premium taxes are exempt from corporation franchise tax requirements. Insurance companies that are exempt from payment of Utah insurance premium taxes or who have qualified as a Utah Corporation, but have not commenced doing business in Utah, are subject to the corporation franchise tax requirements including the minimum tax provisions.

R865-6F-19. Taxation of Trucking Companies Pursuant to Utah Code Ann. Sections 59-7-301 through 59-7-321.

A. Definitions:

1. "Average value" of property means the amount determined by averaging the values of real and personal property at the beginning and end of the income tax year. The Tax Commission may require the averaging of monthly values during the income year or other averaging as necessary to reflect properly the average value of the trucking company's property.

2. "Business and nonbusiness income" are as defined in R865-6F-8(A).

3. "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.

4. "Mobile property mile" means the movement of a unit of mobile property a distance of one mile, whether loaded or unloaded.

5. "Original cost" means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments, except for subsequent capital additions, improvements thereto, or partial dispositions); or if the property has no such basis, or if the valuation of the property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

6. "Property used during the course of the income year" means property that is available for use in the taxpayer's trade or business during the income year.

7. "Trucking company" means a corportion engaged in or transacting the business of transporting freight, merchandise, or other property for hire.

8. "Value of owned real and tangible personal property" means the original cost of owned real and tangible personal property.

9. "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate of rented real and tangible personal property.

B. When a trucking company has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the trucking company's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

C. In general, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(H), and the sales factor in accordance with R865-6F-8(I), except as modified by this rule.

D. The denominator of the property factor shall be the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used, or available for use, within this state during the income year.

1. In the determination of the numerator of the property factor, all property, except mobile property, shall be included in the numerator of the property factor.

2. Mobile property located within and without this state during the income year shall be included in the numerator of the property factor in the ratio that the mobile property's miles within this state bear to the total miles of mobile property within and without this state.

E. The denominator of the payroll factor is the

compensation paid within and without this state by the taxpayer during the income year for the production of business income. The numerator of the payroll factor is the compensation paid within this state during the income year by the taxpayer for the production of business income.

1. With respect to all personnel, except those performing services within and without this state, compensation shall be included in the numerator as provided in R865-6F-8(H).

2. With respect to personnel performing services within and without this state, compensation shall be included in the numerator of the payroll factor in the ratio that their services performed within this state bear to their services performed within and without this state.

F. In general, all revenue derived from transactions and activities in the regular course of the taxpayer's trade or business that produce business income shall be included in the denominator of the revenue factor. The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year.

1. The total state revenue of the taxpayer, other than revenue from hauling freight, mail, and express, shall be attributable to this state in accordance with R865-6F-8(I).

2. The total revenue of the taxpayer attributable to this state during the income year from hauling freight, mail, and express shall be:

a) Intrastate: all receipts from any shipment that both originates and terminates within this state; and

b) Interstate: that portion of the receipts from movements or shipments passing through, into, or out of this state as determined by the ratio that the mobile property miles traveled by the movements or shipments within this state bear to the total mobile property miles traveled by the movements or shipments within and without this state.

G. The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by mobile property. These records are subject to review by the Tax Commission or its agents.

H. This rule requires apportionment of income to this state if during the course of the income tax year, the trucking company:

1. owned or rented any real or personal property in this state;

2. made any pickups or deliveries within this state;

3. traveled more than 25,000 mobile property miles within this state, provided that the total mobile property miles traveled within this state during the income tax year exceeded three percent of the total mobile property miles traveled in all states by the trucking company during the period; or

4. made more than 12 trips into this state.

R865-6F-22. Treatment of Loss Carrybacks and Carryforwards Spanning a Change in Reporting Methods Pursuant to Utah Code Ann. Sections 59-7-402 and 59-7-403.

A. For purposes of this rule, "worldwide year" means a year in which a corporation filed a worldwide combined report as set forth in Sections 59-7-101(34) and 59-7-403.

B. For purposes of this rule, "water's edge year" means a year in which a corporation filed a combined report as set forth in Sections 59-7-101(33) and 59-7-402.

C. A corporation that receives permission from the Tax Commission to change its filing method to the water's edge method after having elected the worldwide method will be required to forfeit any unused loss carryovers that were generated in any worldwide year as a condition precedent to making that change. Any losses generated in a subsequent water's edge year may not be carried back against income earned in any year prior to the change to the water's edge method, but must be carried to a post-change water's edge year.

D. A corporation that elects the worldwide filing method subsequent to adoption of this rule will be required to forfeit any unused loss carryovers that were generated in any water's edge year. Any losses generated in a subsequent worldwide year may not be carried back against income earned in any year prior to the change to the worldwide election method, but must be carried to a post-change worldwide year.

R865-6F-23. Utah Steam Coal Tax Credit Pursuant to Utah Code Ann. Section 59-7-604.

A. Definitions.

1. "Permitted mine" means a mine for which a permit has been issued by the Division of Oil, Gas, and Mining pursuant to Title 40, Chapter 10, Coal Mining and Reclamation.

2. "Purchaser outside of the United States" means any company that purchases coal for shipment outside of the fifty states or the District of Columbia.

B. To qualify for the steam coal tax credit for taxable years beginning on or after January 1, 1993, sales to a purchaser outside of the United States must exceed the permitted mine's sales to a purchaser outside of the United States in the taxable year beginning on or after January 1, 1992, regardless of any change in ownership of the mine.

C. To qualify for the steam coal tax credit the coal must be exported outside of the United States, within a reasonable period of time. A reasonable period of time is considered to be within 90 days after the end of the tax year.

R865-6F-24. Attribution of Sales of Tangible Property to the Sales Factor for Apportionment of Business Income Pursuant to Utah Code Ann. Section 59-7-317.

A. For purposes of 15 U.S.C. Section 381, the phrase "activities within such state by or on behalf of such person" means the activities of any member of a unitary business as that term is defined in Section 59-7-302.

B. If the activity in this state of any member of a unitary business exceeds the activity protected by 15 U.S.C. Section 381, sales of tangible property into this state, from an out-of-state location by any member of the unitary business shall be included in this state's sales factor numerator under Section 59-7-317.

C. If any member of a unitary business is taxable in another state under Section 59-7-305, sales of tangible property from a Utah location, into that state by any member of the unitary business shall not be thrown back to this state as ordinarily provided under Section 59-7-318.

D. This rule is effective for taxable years beginning after December 31, 1992.

R865-6F-26. Historic Preservation Tax Credits Pursuant to

Utah Code Ann. Section 59-7-608.

A. Definitions:

1. "Qualified rehabilitation expenditures" includes architectural, engineering, and permit fees.

2. "Qualified rehabilitation expenditures" does not include movable furnishings.

3. "Residential" as used in Section 59-7-109.5 applies only to the use of the building after the project is completed.

B. Taxpayers shall file an application for approval of all proposed rehabilitation work with the Division of State History prior to the completion of restoration or rehabilitation work on the project. The application shall be on a form provided by the Division of State History.

C. Rehabilitation work must receive a unique certification number from the State Historic Preservation Office in order to be eligible for the tax credit.

D. In order to receive final certification and be issued a unique certification number for the project, the following conditions must be satisfied:

1. The project approved under B. must be completed.

2. Upon completion of the project, taxpayers shall notify the State Historic Preservation Office and provide that office an opportunity to review, examine, and audit the project. In order to be certified, a project shall be completed in accordance with the approved plan and the Secretary of the Interior's Standards for Rehabilitation.

3. Taxpayers restoring buildings not already listed on the National Register of Historic Places shall submit a complete National Register Nomination Form. If the nomination meets National Register criteria, the State Historic Preservation Office shall approve the nomination.

4. Projects must be completed, and the $10,000 expenditure threshold required by Section 59-7-608 must be met, within 36 months of the approval received pursuant to B.

5. During the course of the project and for three years thereafter, all work done on the building shall comply with the Secretary of the Interior's Standards for Rehabilitation.

E. Proof of State Historic Preservation Office certification shall be made by:

1. receiving an authorization form from the State Historic Preservation Office containing the certification number;

2. attaching that authorization form to the tax return for the year in which the credit is claimed.

F. Credit amounts shall be applied against Utah corporate franchise tax due in the tax year in which the project receives final certification under D.

G. Credit amounts greater than the amount of Utah corporate franchise tax due in a tax year shall be carried forward to the extent provided by Section 59-7-608.

H. Carryforward historic preservation tax credits shall be applied against Utah franchise tax due before the application of any historic preservation credits earned in the current year and on a first-earned, first-used basis.

I. Original records supporting the credit claimed must be maintained for three years following the date the return was filed claiming the credit.

R865-6F-27. Order of Credits Applied Against Utah Corporate Franchise Tax Due Pursuant to Utah Code Ann. Sections 9-2-413, 59-6-102, 59-7-104, 59-7-109, 59-7-109.5, 59-7-110, 59-7-110.5, 59-7-110.7, 59-7-110.8, 59-10-603, and 59-13-202.

A. Taxpayers shall deduct credits authorized by Sections 9-2-413, 59-6-102, 59-7-104, 59-7-109, 59-7-109.5, 59-7-110, 59-7-110.5, 59-7-110.7, 59-7-110.8, 59-10-603, and 59-13-202 against Utah corporate franchise tax due in the following order:

1. nonrefundable credits;

2. nonrefundable credits with a carryforward;

3. refundable credits.

R865-6F-28. Enterprise Zone Corporate Franchise Tax Credits Pursuant to Utah Code Ann. Sections 9-2-401 through 9-2-414.

A. Definitions:

1. "Qualifying investment" means an investment in plant, equipment, or other depreciable property that is newly purchased or constructed.

2. "Nonretail capacity" means any position except those involved in selling directly to the public.

3. "Transfer" pursuant to Section 9-2-411, means the relocation of assets and operations of a business, including personnel, plant, property, and equipment.

4. "Individuals who, at the time of employment" pursuant to Section 9-2-412, means individuals who, prior to being employed by the manufacturing business claiming the tax credit, were residents of the enterprise zone.

B. Qualifying investments must meet the following:

1. The plant, equipment, or other depreciable property for which the credit is being taken must be located within the boundaries of the enterprise zone.

2. An investment in plant, equipment, or other depreciable property does not qualify for the investment tax credit until the manufacturing concern is operational within the enterprise zone.

3. A purchase of an already existing manufacturing concern located in an enterprise zone does not qualify as an investment in plant, equipment, or other depreciable property.

4. A qualifying investment may include:

a) The investment in storage facilities to store manufactured goods, raw materials or other items used in the manufacturing process if the storage facility is located in the same enterprise zone as the manufacturing business for which the storage facility is being used.

b) The investment in the retail portion of a primarily manufacturing business if the retail portion is located within the same enterprise zone as the manufacturing portion for which the qualifying investment is being made.

C. The replacement of existing assets does not qualify for the investment tax credit.

D. A business existing in an enterprise zone on the date of its designation shall use the higher of the following in determining its base number of employees to be used in calculating new full-time positions as indicated in Section 9-2-413:

1. The number of employees shall be calculated based on the average number of employees reported to the Department of Employment Security for the four quarters prior to the county's designation as an enterprise zone; or

2. The number of full-time positions on the date of the

county's designation as an enterprise zone.

E. Corporate franchise tax credits may not be used to offset or reduce the $100 minimum tax per corporation.

F. Records and supporting documentation shall be maintained for three years after the date any returns are filed to support the credits taken. For example: If credits are originally taken in 1988 and unused portions are carried forward to 1992, records to support the original credits taken in 1988 must be maintained for three years after the date the 1992 return is filed.

G. Employees must be employed for six months prior to December 31, 1994 to be eligible for the tax credit allowed in Section 9-2-413.

H. If a county that has been designated an enterprise zone loses that designation prior to the expiration of the period for which it was so designated, no tax credits other than carryforward tax credits earned in a prior year in which the county was a designated enterprise zone will be allowed to any business in that county.

I. Enterprise zone credits claimed on returns with an original due date prior to July 1, 1993, may be carried forward for five years. Enterprise zone credits claimed on returns with an original due date on or after July 1, 1993, may be carried forward for three years.

R865-6F-29. Taxation of Railroads Pursuant to Utah Code Ann. Sections 59-7-301 through 59-7-321.

A. Definitions.

1. "Average value" of property means the amount determined by averaging the values of real and personal property at the beginning and ending of the income tax year. The Tax Commission may require the averaging of monthly values during the income year or other averaging as necessary to reflect properly the average value of the railroad's property.

2. "Business and nonbusiness income" are as defined in R865-6F-8(A).

3. "Car-mile" means a movement of a unit of car equipment a distance of one mile.

4. "Locomotive" means a self-propelled unit of equipment designed solely for moving other equipment.

5. "Locomotive-mile" means the movement of a locomotive a distance of one mile under its own power.

6. "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

7. "Original cost" means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments except for subsequent capital additions, improvements thereto or partial dispositions). If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

8. "Property used during the income year" means property that is available for use in the taxpayer's trade or business during the income year.

9. "Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.

10. "Value of owned real and tangible personal property" means the original cost of owned real and tangible personal property.

11. "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate of rented real and tangible personal property.

B. When a railroad has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the railroad's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

C. In general, the property factor shall be determined in accordance with R865-6F-8(G), the payroll factor in accordance with R865-6F-08(H),and the sales factor in accordance with R865-6F-8(I), except as modified by this rule.

D. The denominator of the property factor shall be the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used within this state during the income year.

1. In determining the numerator of the property factor, all property except mobile or movable property such as passenger cars, freight cars, locomotives and freight containers located within and without this state during the income year shall be included in the numerator of the property factor.

2. Mobile or movable property such as passenger cars, freight cars, locomotives and freight containers located within and without this state during the income year shall be included in the numerator of the property factor in the ratio that locomotive-miles and car-miles in the state bear to the total of locomotive-miles and car-miles both within and without this state.

E. The denominator of the payroll factor is the total compensation paid within and without this state by the taxpayer during the income year for the production of business income. The numerator of the payroll factor is the amount of compensation paid within this state during the income year for the production of business income.

1. With respect to all personnel except engine men and trainmen performing services on interstate trains, compensation shall be included in the numerator as provided in R865-6F-8(H).

2. With respect to engine men and trainmen performing services on interstate trains, compensation shall be included in the numerator of the payroll factor in the ratio that their services performed in this state bear to their services performed within and without this state.

3. Compensation for services performed in this state shall be deemed to be the compensation reported or required to be reported by employees for determination of their income tax

liability to this state.

F. In general, all revenue derived from transactions and activities in the regular course of the taxpayer's trade or business within and without this state that produce business income, except per diem and mileage charges that are calculated by the taxpayer, shall be included in the denominator of the revenue factor. The numerator of the revenue factor is the total revenue of the taxpayer within this state during the income year.

1. The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail and express, shall be attributable to this state in accordance with R865-6F-8(I).

2. The total revenue of the taxpayer attributable to this state during the income year for the numerator of the revenue factor from hauling freight, mail and express shall be attributable to this state as follows:

a) Intrastate: all receipts from shipments that both originate and terminate within this state; and

b) Interstate: that portion of the receipts from each movement or shipment passing through, into, or out of this state is determined by the ratio that the miles traveled by the movement or shipment in this state bears to the total miles traveled by the movement or shipment from point of origin to destination.

3. The total revenue of the taxpayer attributable to this state during the income year for the numerator of the revenue factor from hauling passengers shall be attributable to this state as follows:

a) Intrastate: all receipts from the transportation of passengers, including mail and express handled in passenger service, that both originate and terminate within this state; and

b) Interstate: that portion of the receipts from the transportation of interstate passengers, including mail and express handled in passenger service, determined by the ratio that passenger miles in this state bear to the total of passenger miles within and without this state.

G. The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by mobile property. These records are subject to review by the Tax Commission or its agents.

R865-6F-30. Higher Education Savings Incentive Program Tax Deduction Pursuant to Utah Code Ann. Sections 53B-8a-112, 59-7-105, and 59-7-106.

A. "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

B. The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust participant. The TC-675H shall contain the following information for the calendar year:

1. the amount contributed to the trust by the participant;

2. the income earned on the participant's contributions to the trust; and

3. the amount refunded to the participant pursuant to Section 53B-8a-109.

C. The trustee of the trust shall file form TC-675H with the commission on or before January 31 of the year following the calendar year on which the forms are based.

D. The trustee of the trust shall provide each trust participant with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.

E. The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

F. Trust participants must attach a copy of the TC-675H to their state tax return to qualify for the deduction allowed under Section 59-7-106.

R865-6F-31. Taxation of Publishing Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

A. Definitions.

1. "Outer-jurisdictional property" means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material, but that are not physically located in any particular state.

2. "Print" or "printed material" means the physical embodiment or printed version of any thought or expression, including a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal, or any other form of printed matter and may be contained on any medium or property.

3. "Purchaser" and "subscriber" mean the individual, residence, business or other outlet that is the ultimate or final recipient of the print or printed material. Neither term shall mean or include a wholesaler or other distributor of print or printed material.

4. "Terrestrial facility" shall include any telephone line, cable, fiber optic, microwave, earth station, satellite dish, antennae, or other relay system or device that is used to receive, transmit, relay or carry any data, voice, image or other information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

B. When a taxpayer in the business of publishing, selling, licensing or distributing books, newspapers, magazines, periodicals, trade journals, or other printed material has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the taxpayer's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

C. In general, the property factor shall be determined in accordance with R865-6F-8(G), the payroll factor in accordance

with R865-6F-8(H), and the sales factor in accordance with R865-6F-8(I), except as modified by this rule.

D. All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, that is used in the business shall be included in the denominator of the property factor.

E. All real and tangible personal property owned or rented by the taxpayer and used within this state during the tax period shall be included in the numerator of the property factor.

1. Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor in the ratio that the value of the property attributable to its use by the taxpayer in business activities within this state bears to the value of the property attributable to its use in the taxpayer's business activities within and without this state.

a) The value of outer-jurisdictional property attributed to the numerator of the property factor of this state shall be determined by the ratio that the number of uplinks and downlinks, or half-circuits, used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the number of uplinks and downlinks or half-circuits used for transmissions within and without this state.

b) If information regarding uplink and downlink or half-circuit usage is not available or if measurement of activity is not applicable to the type of outer-jurisdictional property used by the taxpayer, the value of that property attributed to the numerator of the property factor of this state shall be determined by the ratio that the amount of time, in terms of hours and minutes of use, or other measurement of use of outer-jurisdictional property that was used during the tax period to transmit from this state and to receive within this state any data, voice, image or other information bears to the total amount of time or other measurement of use that was used for transmissions within and without this state.

c) Outer-jurisdictional property shall be considered to have been used by the taxpayer in its business activities within this state when that property, wherever located, has been employed by the taxpayer in any manner in the publishing, sale, licensing or other distribution of books, newspapers, magazines or other printed material, and any data, voice, image or other information is transmitted to or from this state either through an earth station or terrestrial facility located within this state.

(i) One example of the use of outer-jurisdictional property is when the taxpayer owns its own communications satellite or leases the use of uplinks, downlinks or circuits or time on a communications satellite for the purpose of sending messages to its newspaper printing facilities or employees. The states in which any printing facility that receives the satellite communications are located and the state from which the communications were sent would, under this rule, apportion the cost of the owned or rented satellite to their respective property factors based upon the ratio of the in-state use of the satellite to its usage within and without the state.

(ii) Assume that ABC Newspaper Co. owns a total of $400,000,000 of property and, in addition, owns and operates a communication satellite for the purpose of sending news articles to its printing plant in this state, as well as for communicating with its printing plants and facilities or news bureaus, employees and agents located in other states and throughout the world. Also assume that the total value of its real and tangible personal property that was permanently located in this state for the entire income year was valued at $3,000,000. Assume also that the original cost of the satellite is $100,000,000 for the tax period and that of the 10,000 uplinks and downlinks or half-circuits of satellite transmissions used by the taxpayer during the tax period, 200 or 2% are attributable to its satellite communications received in and sent from this state. Assume further that the company's mobile property that was used partially within this state, consisting of 40 delivery trucks, was determined to have an original cost of $4,000,000 and was used in this state for 95 days. The total value of property attributed to this state is determined as follows:

TABLE

Value of property permanently in state =	$3,000,000
Value of mobile property:	
95/365 or (.260274) x $4,000,000 =	$1,041,096
Value of leased satellite property used in-state:	
(.02) x $100,000,000 =	$2,000,000
Total value of property attributable to state =	$6,041,096
Total property factor percentage:	
$6,041,096/$500,000,000 =	1.2082%

F. The payroll factor shall be determined in accordance with Sections 59-7-315 and 59-7-316.

G. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be excluded under R865-6F-8(J)(3).

H. The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including the following:

1. Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in this state; and

2. Except as provided in H.2.b), gross receipts derived from advertising and the sale, rental, or other use of the taxpayer's customer lists or any portion thereof shall be attributed to this state as determined by the taxpayer's circulation factor during the tax period. The circulation factor shall be determined for each publication of printed material containing advertising and shall be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its circulation to purchasers and subscribers within and without the state.

a) The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations or other comparable sources, provided that the source selected is consistently used from year to year for that purpose. If none of the foregoing sources are available, or, if available, not in form or content sufficient for these purposes, the circulation factor shall be determined from the taxpayer's books and records.

b) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed

solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the Tax Commission may require, that a portion of those receipts be attributed to the sales factor numerator of this state on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by H.2.a). This attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing specific items of advertising bears to its total circulation of printed material to purchasers and subscribers located within the regional or local geographic area. This alternative attribution method shall be permitted only upon the condition that receipts are not double counted or otherwise included in the numerator of any other state.

c) If the purchaser or subscriber is the United States government or if the taxpayer is not taxable in a state, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental or other use of the taxpayer's customer lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for that state, shall be included in the numerator of the sales factor of this state if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in this state.

R865-6F-32. Taxation of Financial Institutions Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

A. Definitions.

1. "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year, or on the later date in the taxable year when the customer relationship began, where any notice, statement or bill relating to a customer's account is mailed.

2. "Borrower or credit card holder located in this state" means:

a) a borrower, other than a credit card holder, that is engaged in a trade or business that maintains its commercial domicile in this state; or

b) a borrower that is not engaged in a trade or business, or a credit card holder, whose billing address is in this state.

3. "Commercial domicile" means:

a) the place from which the trade or business is principally managed and directed; or

b) if a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, that taxpayer's commercial domicile shall be deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which that taxpayer's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of those employees are performed, as of the last day of the taxable year.

4. "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services that are included in the employee's gross income under the federal Internal Revenue Code. In the case of employees not subject to the federal Internal Revenue Code, the determination of whether payments constitute gross income under the federal Internal Revenue Code shall be made as though those employees were subject to the federal Internal Revenue Code.

5. "Credit card" means a credit, travel, or entertainment card.

6. "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

7. "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

8. "Financial institution" means:

a) any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

b) a national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. Sections21 et seq.;

c) a savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(b)(1);

d) any bank, industrial loan corporation, or thrift institution incorporated or organized under the laws of any state;

e) any corporation organized under the provisions of 12 U.S.C. Sections611 through 631.

f) any agency or branch of a foreign depository as defined in 12 U.S.C. Section3101;

g) a production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired;

h) any corporation whose voting stock is more than 50 percent owned, directly or indirectly, by any person or business entity described in A.8.a) through A.8.g), other than an insurance company taxable under Title 59, Chapter 9, Taxation of Admitted Insurers;

i) a corporation or other business entity that derives more than 50 percent of its total gross income for financial accounting purposes from finance leases. For purposes of this subsection, a "finance lease" shall mean any lease transaction that is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase shall include any direct financing lease or leverage lease that meets the criteria of Financial Accounting Standards Board Statement No. 13, Accounting for Leases, or any other lease that is accounted for as a financing lease by a lessor under generally accepted accounting principles. For this classification to apply:

(1) the average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than 50 percent requirement; and

(2) gross income from incidental or occasional transactions shall be disregarded;

j) any other person or business entity, other than an insurance company, a credit union exempt from the corporation franchise tax under Section 59-7-102, a real estate broker, or a securities dealer, that derives more than 50 percent of its gross income from activities that a person described in A.8.b) through A.8.g) and A.8.i) is authorized to transact.

(1) For purposes of this subsection, the computation of gross income shall not include income from non-recurring, extraordinary items; and

(2) The Tax Commission is authorized to exclude any person from the application of A.8.j) upon receipt of proof, by clear and convincing evidence, that the income-producing activity of that person is not in substantial competition with those persons described in A.8.b) through A.8.g) and A.8.i).

9. "Gross rents" means the actual sum of money or other consideration payable for the use or possession of property.

a) Gross rents includes:

(1) any amount payable for the use or possession of real property or tangible property whether designated as a fixed sum of money or as a percentage of receipts, profits or otherwise;

(2) any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement; and

(3) a proportionate part of the cost of any improvement to real property, made by or on behalf of the taxpayer, that reverts to the owner or lessor upon termination of a lease or other arrangement. The amount included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year. However, where a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight and the value of the building is determined in the same manner as if owned by the taxpayer.

b) Gross rents does not include:

(1) reasonable amounts payable as separate charges for water and electric service furnished by the lessor;

(2) reasonable amounts payable as service charges for janitorial services furnished by the lessor;

(3) reasonable amounts payable for storage, provided those amounts are payable for space not designated and not under the control of the taxpayer; and

(4) that portion of any rental payment applicable to the space subleased from the taxpayer and not used by the taxpayer.

10. "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and the taxpayer's customer, or the purchase, in whole or in part, of an extension of credit from another.

a) Loan includes participations, syndications, and leases treated as loans for federal income tax purposes.

b) Loan does not include properties treated as loans under Section 595 of the federal Internal Revenue Code, futures or forward contracts, options, notional principal contracts such as swaps, credit card receivables, including purchased credit card relationships, non-interest bearing balances due from depository institutions, cash items in the process of collection, federal funds sold, securities purchased under agreements to resell, assets held in a trading account, securities, interests in a real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code, or other mortgage-backed or asset-backed security, and other similar items.

11. "Loans secured by real property" means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

12. "Merchant discount" means the fee, or negotiated discount, charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

13. "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

14. "Person" means an individual, estate, trust, partnership, corporation, and any other business entity.

15. "Principal base of operations" means:

a) with respect to transportation property, the place of more or less permanent nature from which that property is regularly directed or controlled; and

b) with respect to an employee, the place of more or less permanent nature from which the employee regularly:

(1) starts his work and to which he customarily returns in order to receive instructions from his employer;

(2) communicates with his customers or other persons; or

(3) performs any other functions necessary to the exercise of his trade or profession at some other point or points.

16. a) "Real property owned" and "tangible personal property owned" mean real and tangible personal property, respectively:

(1) on which the taxpayer may claim depreciation for federal income tax purposes; or

(2) property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes, or could claim depreciation if subject to federal income tax.

b) Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

17. "Regular place of business" means an office at which the taxpayer carries on business in a regular and systematic manner and is continuously maintained, occupied, and used by employees of the taxpayer.

18. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country.

19. "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

20. "Taxable" means:

a) a taxpayer is subject in another state to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax, including a

bank shares tax, a single business tax, an earned surplus tax, or any tax imposed upon or measured by net income; or

b) another state has jurisdiction to subject the taxpayer to taxes regardless of whether that state actually imposes those taxes.

21. "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels and motor vehicles, as well as any equipment or containers attached to that property, such as rolling stock, barges, and trailers.

B. Apportionment and Allocation.

1. A financial institution whose business activity is taxable both within and without this state, or a financial institution whose business activity is taxable within this state and is a member of a unitary group that includes one or more financial institutions where any member of the group is taxable without this state, shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, whose effectively connected income, as defined under the federal Internal Revenue Code, is taxable both within this state and within another state, other than the state in which it is organized, shall allocate and apportion its net income as provided in this rule.

2. All business income shall be apportioned to this state by multiplying that income by the apportionment percentage. The apportionment percentage is determined by adding the taxpayer's receipts factor described in C., property factor described in D., and payroll factor described in E., and dividing that sum by three. If one of the factors is missing, the two remaining factors are added and the sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero, but not merely because its numerator is zero.

3. Each factor shall be computed according to the cash or accrual method of accounting as used by the taxpayer for the taxable year.

4. If a unitary group of corporations filing a combined report includes one or more corporations meeting the definition of financial institution and one or more corporations that do not meet that definition, the provisions of this rule regarding the calculation of the property, payroll, and receipts factors of the apportionment fraction shall apply only to those corporations meeting the definition of financial institution. Those corporations not meeting the definition of financial institution shall compute their apportionment data based on Tax Commission rule R865-6f-8 or such other industry apportionment rule adopted by the Tax Commission that may be applicable. The apportionment data of all members of the unitary group shall be included in calculating a single apportionment fraction for the unitary group. The numerators and denominators of the property, payroll, and receipts factors of the financial institutions shall be added to the numerators and denominators, respectively, of the property, payroll, and sales factors of the nonfinancial institutions to determine the property, payroll, and sales factors of the unitary group.

C. Receipts Factor.

1. In general. The receipts factor is a fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. The receipts factor shall include only those receipts that constitute business income and are included in the computation of the apportionable income base for the taxable year.

2. Receipts from the lease of real property. The numerator of the receipts factor includes receipts from the lease or rental of real property owned by the taxpayer and receipts from the sublease of real property, if the property is located within this state.

3. Receipts from the lease of tangible personal property.

a) Except as described in C.4., the numerator of the receipts factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

b) Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this state.

(1) The extent an aircraft will be deemed to be used in this state and the amount of receipts that shall be included in the numerator of this state's receipts factor are determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft.

(2) If the extent of the use of any transportation property within this state cannot be determined, that property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(3) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

4. Interest from loans secured by real property.

a) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, the receipts described in this subsection shall be included in the numerator of the receipts factor if the borrower is located in this state.

b) The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made, and any and all subsequent substitutions of collateral shall be disregarded.

5. Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

6. Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code.

a) The amount of net gains, but not less than zero, from the sale of loans secured by real property included in the numerator is determined by multiplying the net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.4., and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

b) The amount of net gains, but not less than zero, from the sale of loans not secured by real property included in the numerator is determined by multiplying the net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.5., and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

7. Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

8. Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.7., and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

9. Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.7., and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

10. Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. The receipts shall be computed net of any cardholder charge backs, but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

11. Loan servicing fees.

a) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.4., and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

b) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.5., and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

c) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor shall include those fees if the borrower is located in this state.

12. Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if the service is performed in this state. If the service is performed both within and without this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if a greater proportion of the income-producing activity is performed in this state based on cost of performance.

13. Receipts from investment assets and activities and trading assets and activities.

a) Interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities shall be included in the receipts factor.

b) Investment assets and activities and trading assets and activities include investments securities, trading account assets, federal funds, securities purchased and sold under agreements to resell or repurchase, options, futures contracts, forward contracts, notional principal contracts such as swaps, equities, and foreign currency transactions.

c) The receipts factor shall include the following investment and trading assets and activities:

(1) The receipts factor shall include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(2) The receipts factor shall include the amount by which interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from those assets and activities.

d) The numerator of the receipts factor includes interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities described in C.13. that are attributable to this state.

(1) The amount of interest, dividends, net gains, but not less than zero, and other income from investment assets and activities in the investment accounts attributed to this state and included in the numerator is determined by multiplying all such income from assets and activities by a fraction, the numerator of which is the average value of the assets properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those assets.

(2) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount of those funds and securities described in C.13.c)(1) by a fraction, the numerator of which is the average value of federal funds sold and securities

purchased under agreements to resell that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those funds and securities.

(3) The amount of interest, dividends, gains, and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book and foreign currency transactions, but excluding amounts described in C.13.d)(1) and C.13.d)(2), attributable to this state and included in the numerator is determined by multiplying the amount described in C.13.c)(2) by a fraction, the numerator of which is the average value of those trading assets that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those assets.

(4) For purposes of this subsection, average value shall be determined using the rules for determining the average value of tangible personal property set forth in D.3. and D.4.

e) In lieu of using the method set forth in C.13.d), the taxpayer may elect, or the Tax Commission may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this subsection.

(1) The amount of interest, dividends, net gains, but not less than zero, and other income from investment assets and activities in the investment account attributed to this state and included in the numerator is determined by multiplying all income from those assets and activities by a fraction, the numerator of which is the gross income from those assets and activities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those assets and activities.

(2) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount of those funds and securities described in C.13.c)(1) by a fraction, the numerator of which is the gross income from those funds and securities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those funds and securities.

(3) The amount of interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book and foreign currency transactions, but excluding amounts described in C.13.e)(1) or C.13.e)(2), attributable to this state and included in the numerator is determined by multiplying the amount described in C.13.c)(2)by a fraction, the numerator of which is the gross income from those trading assets and activities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those assets and activities.

f) If the taxpayer elects or is required by the Tax Commission to use the method set forth in C.13.e), the taxpayer shall use this method on all subsequent returns unless the taxpayer receives prior permission from the Tax Commission to use, or the Tax Commission requires, a different method.

g) The taxpayer shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one regular place of business is in this state and one regular place of business is outside this state, that asset or activity shall be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, policies and guidelines shall be presumed to be established at the commercial domicile of the taxpayer.

14. All other receipts. The numerator of the receipts factor includes all other receipts pursuant to the rules set forth in Rule R865-6F-8(I) and (J).

15. Attribution of certain receipts to commercial domicile.

a) Except as provided in C.15.b), all receipts that would be assigned under this section to a state in which the taxpayer is not taxable shall be included in the numerator of the receipts factor if the taxpayer's commercial domicile is in this state.

b) (1) If a unitary group includes one or more financial institutions, and if any member of the unitary group is subject to the taxing jurisdiction of this state, the receipts of each financial institution in the unitary group shall be included in the numerator of this state's receipts factor as provided in C.1. through C.14. rather than being attributed to the commercial domicile of the financial institution as provided in C.15.a).

(2) If a unitary group includes one or more financial institutions whose commercial domicile is in this state, and if any member of the unitary group is taxable in another state under section 59-7-305, the receipts of each financial institution in the unitary group that would be included in the numerator of the other state's receipts factor under C.1. through C.14. may not be included in the numerator of this state's receipts factor.

D. Property Factor.

1. In General.

a) For taxpayers that do not elect to include the property described in D.7. through D.9. within the property factor, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property owned by or rented to the taxpayer that is located or used within this state during the taxable year, and the denominator of which is the average value of all that property located or used within and without this state during the taxable year.

b) For taxpayers that elect to include the property described in D.7. through D.9. within the property factor, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property owned by or rented to the taxpayer that is located or used within this state during the taxable year, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable year, and the denominator of which is the average value of all that property located or used within and without this state during the taxable year.

2. Property included. The property factor shall include only property the income or expenses of which are included, or would have been included if not fully depreciated or expensed,

or depreciated or expensed to a nominal amount, in the computation of the apportionable income base for the taxable year.

3. Value of property owned by the taxpayer.

a) For taxpayers that do not elect to include the property described in D.7. through D.9. within the property factor, the value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of that property for federal income tax purposes without regard to depletion, depreciation or amortization.

b) For taxpayers that elect to include the property described in D.7. through D.9. within the property factor:

(1) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of that property for federal income tax purposes without regard to depletion, depreciation or amortization.

(2) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged-off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines that is treated as charged-off for federal income tax purposes shall be treated as charged-off for purposes of this rule.

(3) Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged-off in whole or in part for federal income tax purposes, the portion of the receivable charged-off is not outstanding.

4. Average value of property owned by the taxpayer. The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two.

a) If averaging on this basis does not properly reflect average value, the Tax Commission may require averaging on a more frequent basis, or the taxpayer may elect to average on a more frequent basis.

b) When averaging on a more frequent basis is required by the Tax Commission or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission from the Tax Commission to use a different method, or the Tax Commission requires a different method of determining average value.

5. Average value of real property and tangible personal property rented to the taxpayer.

a) The average value of real property and tangible personal property that the taxpayer has rented from another and are not treated as property owned by the taxpayer for federal income tax purposes, shall be determined annually by multiplying the gross rents payable during the taxable year by eight.

b) If the use of the general method described in this subsection results in inaccurate valuations of rented property, any other method that properly reflects the value may be adopted by the Tax Commission or by the taxpayer when approved in writing by the Tax Commission. Once approved, that other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the Tax Commission to use a different method, or the Tax Commission requires a different method of valuation.

6. Location of real property and tangible personal property owned or rented to the taxpayer.

a) Except as described in D.6.b), real property and tangible personal property owned by or rented to the taxpayer are considered located within this state if they are physically located, situated, or used within this state.

b) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state.

(1) The extent an aircraft will be deemed to be used in this state and the amount of value that shall be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere.

(2) If the extent of the use of any transportation property within this state cannot be determined, the property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(3) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

7. Location of Loans.

a) A loan is considered located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

b) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business without the state shall be presumed to have been properly assigned if:

(1) the taxpayer has assigned, in the regular course of its business, the loan on its records to a regular place of business consistent with federal or state regulatory requirements;

(2) the assignment on its records is based upon substantive contacts of the loan to the regular course of business; and

(3) the taxpayer uses the records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

c) The presumption of proper assignment of a loan provided in D.7.b) may be rebutted upon a showing by the Tax Commission, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When the presumption has been rebutted, the loan shall then be located within this state if:

(1) the taxpayer had a regular place of business within this state at the time the loan was made; and

(2) the taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur within this state.

d) In the case of a loan assigned by the taxpayer to a place without this state that is not a regular place of business, it shall be presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of the evidence, that the

preponderance of substantive contacts regarding the loan occurred within this state if, at the time the loan was made the taxpayer's commercial domicile, as defined in this rule, was within this state.

e) To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue shall be reviewed on a case-by-case basis, and consideration shall be given to activities such as the solicitation, investigation, negotiation, approval, and administration of the loan.

(1) Solicitation. Solicitation is either active or passive.

(a) Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. The activity is located at the regular place of business at which the taxpayer's employee is regularly connected or working out of, regardless of where the services of the employee were actually performed.

(b) Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(2) Investigation. Investigation is the procedure whereby employees of the taxpayer determine the credit-worthiness of the customer as well as the degree of risk involved in making a particular agreement. The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(3) Negotiation. Negotiation is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement, such as amount, duration, interest rate, frequency of repayment, currency denomination, and security required. The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(4) Approval. Approval is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement.

(a) The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(b) If the board of directors makes the final determination, the activity is located at the commercial domicile of the taxpayer.

(5) Administration. Administration is the process of managing the account.

(a) Administration includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement and proceeding against the borrower or the security interest if the borrower is in default.

(b) The activity is located at the regular place of business that oversees this activity.

8. Location of credit card receivables. For purposes of determining the location of credit card receivables, credit card receivables shall be treated as loans and shall be subject to the provisions of D.7.

9. Period for which properly assigned loan remains assigned. A loan that has been properly assigned to a state shall, absent any change of material fact, remain assigned to that state for the length of the original term of the loan. Thereafter, the loan may be properly assigned to another state if the loan has a preponderance of substantive contact to a regular place of business in that state.

10. Each taxpayer shall make an initial election on whether to include the property described in D.7. through D.9. within the property factor. The initial election is the election made or the filing position taken on the first return filed after the effective date of this rule. This election is irrevocable for a period of three years from the time the initial election is made, except in the case where a substantial ownership change occurs and commission approval is obtained to change the election. After the initial three-year period, the election may be revocable only with the prior approval of the commission and shall require the showing of a significant change in circumstance.

E. Payroll factor.

1. In general. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid by the taxpayer both within and without this state during the taxable year. The payroll factor shall include only that compensation included in the computation of the apportionable income tax base for the taxable year.

2. Compensation relating to nonbusiness income and independent contractors. The compensation of any employee for services or activities connected with the production of nonbusiness income, and payments made to any independent contractor or any other person not properly classifiable as an employee, shall be excluded from both the numerator and denominator of this factor.

3. When compensation paid in this state. Compensation is paid in this state if any one of the following tests, applied consecutively, is met:

a) The employee's services are performed entirely within this state.

b) The employee's services are performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The term "incidental"means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

c) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(1) if the employee's principal base of operations is within this state;

(2) if there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or

(3) if the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

F. This rule is effective for taxable years beginning after

December 31, 1997.

R865-6F-33. Taxation of Telecommunications Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

A. Definitions.

1. "Call" means a specific telecommunications transmission as described in A.6.

2. "Channel termination point" means the point at which information can enter or leave the telecommunications network.

3. "Communications channel" means a communications path, which can be one-way or two-way, depending on the channel, between two or more points. The path may be designed for the transmission of signals representing human speech, digital or analog data, facsimile, or images.

4. "Outerjurisdictional property" means tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in a telecommunications business, but that are not physically located in any particular state.

5. "Private telecommunications service" means a dedicated telephone service that entitles the subscriber to the exclusive or priority use of a communications channel or groups of communications channels from one or more channel termination points to another channel termination point.

6. "Telecommunications" means the electronic transmission of voice, data, image, and other information through the use of any medium such as wires, cables, electromagnetic waves, light waves, or any combination of those or similar media now in existence or that might be devised, but telecommunications does not include the information content of any such transmission.

7. "Telecommunications service" means providing telecommunications, including services provided by telecommunication service resellers, for a charge and includes telephone service, telegraph service, paging service, personal communication services and mobile or cellular telephone service, but does not include electronic information service or Internet access service.

B. Apportionment and Allocation.

1. A corporation engaged in the business of telecommunications that is taxable both within and without this state, shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306.

2. All business income shall be apportioned to this state by multiplying that income by the apportionment percentage. The apportionment percentage is determined by adding the taxpayer's receipts factor, property factor and payroll factor and dividing that sum by three. If one of the factors is missing, the remaining factors are added and that sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero.

3. Except as otherwise provided in this rule, the property factor shall be determined in accordance with Tax Commission rule R865-6F-8(G), the payroll factor in accordance with rule R865-6F-8(H) and the sales factor in accordance with rule R865-6F-8(I).

C. Property Factor.

1. Outerjurisdictional property that is used by a taxpayer in providing a telecommunications service shall be attributed to this state based on the ratio of property within this state used in providing that service, to property everywhere used in providing the service, exclusive of property not located in any state. The term "property" as used herein refers to property includable in the property factor of the Utah apportionment fraction as defined in Tax Commission rule R865-6F-8(G).

D. Sales Factor Numerator.

1. The following sales and receipts from telecommunications service other than interstate or international private telecommunications service, shall be included in the Utah sales and receipts numerator:

a) receipts derived from charges for providing telephone "access" from a location within Utah. "Access" means that a call can be made or received from a point within this state. An example of this type of receipt is a monthly subscriber fee billed with reference to equipment located in Utah;

b) receipts derived from charges for unlimited calling privileges, if the charges are billed by reference to equipment located in Utah;

c) receipts derived from charges for individual toll calls that originate and terminate in Utah;

d) receipts derived from charges for individual toll calls that either originate or terminate in Utah and are billed by reference to a customer or equipment located in Utah;

e) receipts derived from any other charges if the charges are not includable in another state's sales factor numerator under that state's law, and the customer's billing address is in Utah.

2. Gross receipts derived from providing interstate and international private telecommunications services shall be determined as follows:

a) If the segment of the interstate or international channel between each termination point is separately billed, 100 percent of the charge imposed at each termination point in this state and for service in this state between those points is includable in the Utah sales factor. In addition, 50 percent of the charge imposed for service between a channel termination point outside this state and a point inside the state shall be included in the Utah sales factor. For purposes of this paragraph, termination points shall be measured by the nearest termination point inside the state to the first termination point outside the state.

b) If each segment of the interstate or international channel is not separately billed, the Utah sales shall be the same portion of the interstate or international channel charge that the number of channel termination points within this state bears to the total number of channel termination points within and without this state.

R865-6F-34. Qualified Subchapter S Subsidiaries Pursuant to Utah Code Ann. Section 59-7-701.

A. "Qualified subchapter S subsidiary" means a qualified subchapter S subsidiary as defined in Section 1361(b), Internal Revenue Code.

B. For purposes of Title 59, Chapter 7, Part 7, a qualified subchapter S subsidiary shall be treated in the same manner as it is treated for federal tax purposes under Section 1361(b), Internal Revenue Code.

C. An S corporation that owns one or more qualified

subchapter S subsidiaries must take into account the activities of each qualified subchapter S subsidiary in determining whether the S corporation parent is doing business in Utah. For purposes of this determination, all of a subsidiary's activities will be attributed to the S corporation parent.

D. For purposes of Title 59, Chapter 7, Part 7:

1. the Utah property, payroll, and sales of each qualified subchapter S subsidiary shall be added, respectively, to the Utah property, payroll, and sales of the S corporation parent to determine the numerators of the property, payroll, and sales factors; and

2. the total property, payroll, and sales of each qualified subchapter S subsidiary shall be added, respectively, to the total property, payroll, and sales of the S corporation parent to determine the denominators of the property, payroll, and sales factors.

E. Except as provided in D., the apportionment fraction for an S corporation shall be calculated based on Sections 59-7-311 through 59-7-321 and as provided in Tax Commission rule R865-6F-8.

R865-6F-35. S Corporation Determination of Tax Pursuant to Utah Code Ann. Section 59-7-703.

A. For purposes of Section 59-7-703(1)(a)(i), "items of income or loss from Schedule K of the 1120S federal form" shall be calculated by adding back to the line on the Schedule K labeled "Income (loss)" any amount deducted on that schedule for charitable contributions. If the S corporation was not required to complete the line labeled "Income (loss)" on the Schedule K, a pro forma calculation of the amount that would have been entered on the "Income (loss)" line shall be used for purposes of this rule.

B. The rate that the S corporation shall withhold for nonresident shareholders shall be computed as follows:

1. A deduction equal to 15 percent of the Utah income attributable to nonresident shareholders shall be allowed in place of a standard deduction, itemized deductions, personal exemptions, federal tax determined for the same period, or any other deductions.

a) An S corporation that is entitled to subtract a loss carryforward and that elected, under the laws in effect prior to January 1, 1994, to use Option A as the method to pay its taxes, shall apply the 15 percent deduction to Utah income attributable to nonresident shareholders after the subtraction for loss carryforwards.

2. The tax shall be computed using the maximum Utah individual income tax rate applied to the combined nonresident shareholders' share of the S corporation's income after deduction of the amount allowed under B.1.

C. An S corporation with nonresident shareholders shall complete Schedule N of form TC-20S, and shall provide the following information for each nonresident shareholder:

1. name;

2. social security number;

3. percentage of S corporation held; and

4. amount of Utah tax paid or withheld on behalf of that shareholder.

KEY: taxation, franchise, historic preservation, trucking industries

March 16, 1999

Notice of Continuation April 10, 1997

9-2-401 through 9-2-414
16-10-120
16-10a-1501 through 16-10a-1522
53B-8a-112
59-7-102
59-7-104 through 59-7-106
59-7-108
59-7-109
59-7-110
59-7-118
59-7-119
59-7-121
59-7-124
59-7-301 through 59-7-321
59-7-402
59-7-403
59-7-501
59-7-505
59-7-604
59-7-608
59-7-701
59-7-703
59-10-603
59-13-202

R865. Tax Commission, Auditing.
R865-7H. Environmental Assurance Fee.
R865-7H-1. Environmental Assurance Fee for Retailers or Consumers Not Participating in the Environmental Assurance Program Pursuant to Utah Code Ann. Section 19-6-410.5.

A. Retailers or consumers who are owners or operators of tanks, including owners or operators of above-ground storage tanks, who do not participate in the Environmental Assurance Program, may receive an exemption from the environmental assurance fee if:

1. none of the owner's or operator's tanks are covered under the Environmental Assurance Program; and

2. the owner or operator purchases the petroleum product for the tank directly from the refinery, or purchases a direct import of a petroleum product for which the environmental assurance fee has not previously been imposed.

B. Retailers or consumers who are owners or operators of tanks and who do not participate in the Environmental Assurance Program, but who fail to meet the conditions provided under this rule to purchase petroleum products exempt from the environmental assurance fee may apply to the Tax Commission for a refund of those fees paid, no more often than on a monthly basis, on form TC-113ES.

C. For purposes of the exemption and refund provisions of this rule, owners or operators of above-ground storage tanks include owners of fuel stored in tanks owned by a third party where the owner of the fuel pays a fee for use of the tank.

D. On a monthly basis, the Department of Environmental Quality shall provide the Tax Commission with a list of current participants in the Environmental Assurance Program.

R865-7H-2. Environmental Assurance Fee on Packaged Petroleum Products Pursuant to Utah Code Ann. Section 19-6-410.5.

A. Petroleum products that are brought into this state packaged in barrels, drums, and cans are exempt from the environmental assurance fee.

B. Individuals who purchase petroleum products in bulk quantities and subsequently repackage those petroleum products in barrels, drums, or cans may receive a refund of environmental assurance fees paid on the repackaged petroleum products if, prior to the repackaging, the products were not stored in a tank covered by the Environmental Assurance Program.

C. Individuals who qualify for a refund of environmental assurance fees under B. may apply to the Tax Commission for a refund of those fees paid, no more often than on a monthly basis, on form TC-113ES.

R865-7H-3. Environmental Assurance Fee on Exports of Petroleum Products Pursuant to Utah Code Ann. Section 19-6-410.5.

A. Petroleum products exported from a refinery directly out of state by the refiner or the first purchaser are exempt from the environmental assurance fee.

B. Individuals who store petroleum products in the state and subsequently export those petroleum products from the state may receive a refund of environmental assurance fees paid on the exported petroleum products if, prior to the export of the petroleum products, the petroleum products were not stored in a tank covered by the Environmental Assurance Program.

C. Individuals who qualify for a refund of environmental assurance fees under B. may apply to the Tax Commission for a refund of those fees paid, no more often than on a monthly basis, on form TC-113ES.

KEY: taxation, environment
March 16, 1999 **19-6-410.5**

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(3)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight- line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

a) purchase price of an asset and its components;

b) transportation costs;

c) installation charges and construction costs; and

d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self - consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that

is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

(a) actual sales of like mineral by the taxpayer;

(b) actual sales of like mineral by other taxpayers; or

(c) posted prices of like mineral; or

(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and

b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or any combination thereof.

b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-8. Security for Property Tax on Uranium and Vanadium Mines Pursuant to Utah Code Ann. Section 59-2-211.

A. The security deposit allowed by Section 59-2-211 shall be requested from the mine owners or operators by giving notice in the manner required by Section 59-2-211. A list of mine owners and operators who have made lump sum security deposits with the Tax Commission will be furnished annually by the Tax Commission to any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah.

B. At the option of the mine owner or operator, within 30 days after receiving proper notice from the Tax Commission, or if the mine owner or operator has not complied with the request within the 30 day period, the Tax Commission may implement the following procedure:

1. Any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah shall withhold 4 percent, or any higher amount set by the Tax Commission, of the gross proceeds due to the mine operator or owner.

2. All amounts withheld shall be remitted to the Tax Commission by the last day of April, July, October, and January for the immediately preceding calendar quarter, in the manner set forth by the Tax Commission.

3. Not later than the last day of February, owners or operators of uranium and vanadium mines who have not made lump sum security deposits with the Tax Commission shall be provided with a statement from the Tax Commission showing all security deposit amounts withheld from their gross proceeds during the previous calendar year.

4. The Tax Commission shall provide the county treasurers with a list of all uranium and vanadium mine owners and operators who have had security deposit amounts withheld. The county treasurers shall then advise the Tax Commission in writing of the amount of taxes due from each mine owner or operator on the Tax Commission's list.

5. Once all county treasurers have responded, the Tax Commission shall forward to each county treasurer the taxes due, or the pro rata portion thereof, to the extent taxes have been withheld and remitted to the Tax Commission.

a. Any amount withheld in excess of the total taxes due to all counties shall be refunded to the appropriate mine owner or operator by the Tax Commission.

b. If the amount withheld is not sufficient to pay the full amount of taxes due, the county treasurers shall collect the balance of taxes directly from the mine owner or operator.

R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.

A. Definitions.

1. "Person" is as defined in Section 68-3-12.

2. "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.

3. "Unit operator" means a person who operates all producing wells in a unit.

4. "Independent operator" means a person operating an oil or gas producing property not in a unit.

5. One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

6. "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

7. "Product price" means:

a) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

b) Gas:

(1) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(2) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

8. "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

9. "Revenue" means expected annual gross revenue,

calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

10. "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

a) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

b) Interest, depreciation, or any expense not directly related to the unit will shall not be included as allowable costs.

11. "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

B. The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

1. The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

2. The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

3. The discount rate shall contain the same elements as the expected income stream.

C. Assessment Procedures.

1. Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

2. The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

3. The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in C.2. of this rule or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

4. The value of the production assets shall be considered in the value of the oil and gas reserves as determined in C.2. above. Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

5. The minimum value of the property shall be the value of the production assets.

D. Collection by Operator.

1. The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of the ad valorem tax on each fractional interest according to the estimate made.

a) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

b) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

c) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

2. The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

3. Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

4. Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.

A. The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

B. After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor and the Tax Commission a notice of the preservation easement containing the following information:

1. the property owner's name;

2. the address of the property; and

3. the serial number of the property.

C. The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-25.

A. Definitions:

1. "Utah fair market value" means the fair market value of

that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.

2. "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-25.

3. "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.

4. "Exempt energy supplier" means an energy supplier whose tangible property is exempted by Article XIII, Sec. 2. of the Constitution of Utah from the payment of ad valorem property tax.

5. "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.

6. "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.

7. "Sold," for the purpose of interpreting D, means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.

8. "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.

9. All definitions contained in the Interlocal Cooperation Act, Section 11-13-3, as in effect on December 31, 1989, apply to this rule.

B. The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.

1. The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.

2. The cost approach to value shall consist of the total of the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.

3. In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to B.2., a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:

a) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.

b) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.

C. If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.

D. Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.

E. For purposes of calculating the amount of the fee payable under Section 11-13-25(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.

F. In computing its tax rate pursuant to the formula specified in Section 59-2-913(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-25(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-913.

G. B.1. and B.2. are retroactive to the lien date of January 1, 1984. B.3. is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

R884-24P-17. Reappraisal of Real Property by County Assessors Pursuant to Utah Constitution, Article XIII, Subsection 11, and Utah Code Ann. Sections 59-2-303, 59-2-

302, and 59-2-704.

A. The following standards shall be followed in sequence when performing a reappraisal of all classes of locally-assessed real property within a county.

1. Conduct a preliminary survey and plan.

a) Compile a list of properties to be appraised by property class.

b) Assemble a complete current set of ownership plats.

c) Estimate personnel and resource requirements.

d) Construct a control chart to outline the process.

2. Select a computer-assisted appraisal system and have the system approved by the Property Tax Division.

3. Obtain a copy of all probable transactions from the recorder's office for the three-year period ending on the effective date of reappraisal.

4. Perform a use valuation on agricultural parcels using the most recent set of aerial photographs covering the jurisdiction.

a) Perform a field review of all agricultural land, dividing up the land by agricultural land class.

b) Transfer data from the aerial photographs to the current ownership plats, and compute acreage by class on a per parcel basis.

c) Enter land class information and the calculated agricultural land use value on the appraisal form.

5. Develop a land valuation guideline.

6. Perform an appraisal on improved sold properties considering the three approaches to value.

7. Develop depreciation schedules and time-location modifiers by comparing the appraised value with the sale price of sold properties.

8. Organize appraisal forms by proximity to each other and by geographical area. Insert sold property information into the appropriate batches.

9. Collect data on all nonsold properties.

10. Develop capitalization rates and gross rent multipliers.

11. Estimate the value of income-producing properties using the appropriate capitalization method.

12. Input the data into the automated system and generate preliminary values.

13. Review the preliminary figures and refine the estimate based on the applicable approaches to value.

14. Develop an outlier analysis program to identify and correct clerical or judgment errors.

15. Perform an assessment/sales ratio study. Include any new sale information.

16. Make a final review based on the ratio study including an analysis of variations in ratios. Make appropriate adjustments.

17. Calculate the final values and place them on the assessment role.

18. Develop and publish a sold properties catalog.

19. Establish the local Board of Equalization procedure.

20. Prepare and file documentation of the reappraisal program with the local Board of Equalization and Property Tax Division.

B. The Tax Commission shall provide procedural guidelines for implementing the above requirements.

R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.

A. "State Registered Appraiser," State Certified General Appraiser, and "State Certified Residential Appraiser" are as defined in Section 61-2b-2.

B. The ad valorem training and designation program consists of several courses and practicums.

1. Certain courses must be sanctioned by either the International Association of Assessing Officers (IAAO) or the Western States Association of Tax Administrators (WSATA).

2. Most courses are one week in duration, with an examination held on the final day. The courses comprising the basic designation program are:

a) Course A - Assessment Practice in Utah;

b) Course B - Fundamentals of Real Property Appraisal (IAAO);

c) Course C - Mass Appraisal of Land;

d) Course D - Building Analysis and Valuation;

e) Course E - Income Approach to Valuation (IAAO);

f) Course G - Development and Use of Personal Property Schedules; and

g) Course H - Appraisal of Public Utilities and Railroads (WSATA).

C. There are four recognized ad valorem designations: Ad Valorem Residential Appraiser, Ad Valorem General Real Property Appraiser, Ad Valorem Personal Property Auditor/Appraiser, and Ad Valorem Centrally Assessed Valuation Analyst. The designations are granted only to individuals working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors. An assessor, county employee, or state employee must hold the appropriate designation listed below to gain the authority to value property for ad valorem taxation purposes.

1. Ad Valorem Residential Appraiser:

a) Requires the successful completion of Courses A, B, C, D, and a comprehensive residential field practicum, and attainment of state registered or certified appraiser status.

b) Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

2. Ad Valorem General Real Property Appraiser:

a) Requires the successful completion of Courses A, B, C, D, and E and a comprehensive field practicum including both residential and commercial properties, and attainment of state registered or certified appraiser status.

b) Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

3. Ad Valorem Personal Property Auditor/Appraiser:

a) Requires the successful completion of Courses A, B, and G, and a comprehensive auditing practicum.

b) Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

4. Ad Valorem Centrally Assessed Valuation Analyst:

a) Requires the successful completion of Courses A, B, E, and H, and a comprehensive valuation practicum, and attainment of state registered or certified appraiser status.

b) Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

D. Candidates must pass the final examination for each course with a grade of 70 points or more to be successful.

E. If a candidate fails to receive a passing grade on a final examination, one re-examination is allowed. If the re-examination is not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

F. A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

1. Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

2. A trainer, assigned by the Tax Commission, will oversee and administer the practicum.

G. An individual holding a specified designation can qualify for other designations by meeting the additional requirements outlined above.

H. Maintaining designated status requires completion of 28 hours of Tax Commission approved classroom work every two years.

I. Upon termination of employment from any Utah assessment jurisdiction, or if the individual is no longer working primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

1. Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

2. If more than four years elapse between termination and rehire, and

a) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, prior designation status will be reinstated; or

b) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 or more.

J. All appraisal work performed by Tax Commission designated appraisers shall meet the current requirements of the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by the Appraisal Foundation.

K. If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met.

1. The private sector appraisers contracting the work must hold the State Certified Residential Appraiser or State Certified General Appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only appraisers with the State Certified General Appraiser license may appraise nonresidential properties.

2. All appraisal work shall meet the current requirements of USPAP.

L. The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

1. There are no specific registration or educational requirements related to this function.

2. An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

a) creation of a new facility;

b) acquisition of personal property; or

c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

a) a detailed list of preconstruction cost data is supplied to the responsible agency;

b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of D.3.a) or D.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of January 1 of the tax year, shall be determined by adjusting the cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918 through 59-2-924.

A. The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

1. If a county desires to use a modified version of the

Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

a) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax changes.

b) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

2. The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

B. The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

1. New property is created by a new legal description; or

2. The status of the improvements on the property has changed.

3. In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

4. If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in A.

C. Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

D. All completion dates specified for the disclosure of property tax information must be strictly observed.

1. Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in A.

E. If the proposed rate exceeds the certified rate, jurisdictions in which the fiscal year is the calendar year are required to hold public hearings even if budget hearings have already been held for that fiscal year.

F. If the cost of public notice required under Sections 59-2-918 and 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

G. Calculation of the amount and percentage increase in property tax revenues required by Sections 59-2-918 and 59-2-919, shall be computed by comparing property taxes levied for the current year with property taxes collected the prior year, without adjusting for revenues attributable to new growth.

H. If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

I. The value of property subject to the uniform fee under Section 59-2-405 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

J. The value and taxes of property subject to the uniform fee under Section 59-2-405, as well as tax increment distributions and related taxable values of redevelopment agencies, are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-913.

K. The following formulas and definitions shall be used in determining new growth:

1. Actual new growth shall be computed as follows:

a) the taxable value for the current year adjusted for redevelopment minus year-end taxable value for the previous year adjusted for redevelopment; then

b) plus or minus changes in value as a result of factoring; then

c) plus or minus changes in value as a result of reappraisal; then

d) plus or minus any change in value resulting from a legislative mandate or court order.

2. Net annexation value is the taxable value for the current year adjusted for redevelopment of all properties annexed into an entity during the previous calendar year minus the taxable value for the previous year adjusted for redevelopment for all properties annexed out of the entity during the previous calendar year.

3. New growth is equal to zero for an entity with:

a) an actual new growth value less than zero; and

b) a net annexation value greater than or equal to zero.

4. New growth is equal to actual new growth for:

a) an entity with an actual new growth value greater than or equal to zero; or

b) an entity with:

i) an actual new growth value less than zero; and

ii) the actual new growth value is greater than or equal to the net annexation value.

5. New growth is equal to the net annexation value for an entity with:

a) a net annexation value less than zero; and

b) the actual new growth value is less than the net annexation value.

6. Adjusted new growth equals new growth multiplied by the mean collection rate for the previous five years.

L. The following definitions and formulas shall be used in determining the certified tax rate:

1. Current year adjusted taxable value equals the taxable value for the current year adjusted for redevelopment; then

a) adjusted for estimated value losses due to appeals, using an average percentage loss for the past three years; then

b) adjusted for estimated collection losses.

2. The certified tax rate shall be computed as follows:

a) Last year's taxes collected, excluding redemptions, penalties, interest, roll-back taxes, and other miscellaneous collections.

b) Divided by the sum of the current year adjusted taxable value less adjusted new growth.

3. Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

a) the valuation bases for the funds are contained within identical geographic boundaries; and

b) the funds are under the levy and budget setting authority of the same governmental entity.

4. Exceptions to L.3. are the county assessing and collecting levy, as described in Section 59-2-906.1(3), and the additional levies for property valuation and reappraisal, as described in Section 59-2-906.3.

a) These levies may not be included as part of a county's aggregate certified rate. Instead, they must be segregated into a separate aggregate certified rate.

b) The separate aggregate certified rate representing these levies is subject to the proposed tax increase requirements of Sections 59-2-918 and 59-2-919.

M. For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

N. No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

R884-24P-26. Requirements of the Farmland Assessment Act of 1969 Pursuant to Utah Code Ann. Sections 59-2-501 through 59-2-515.

A. A parcel of land less than five acres in size may qualify for assessment under the provisions of the Farmland Assessment Act (FAA) if it:

1. has ownership identical to and is used in conjunction with a qualifying parcel of five or more acres;

2. is in close proximity to the primary farm;

3. has a direct relationship to the total agricultural enterprise;

4. makes a significant contribution to the enterprise's total production; and

5. meets all other requirements set forth in Section 59-2-503.

B. FAA application forms shall provide for reporting of the current serial number, legal description, ownership, and all other pertinent information of the subject properties.

1. The assessor shall maintain all FAA records in the assessor's office. These records shall include the original year of application and clearly indicate the number of years these properties have been assessed and taxed under the FAA.

2. All parcels assessed and taxed under the provisions of the FAA shall be so designated on the assessment roll.

3. All FAA applications, including those resulting from changes in ownership, legal description, additions, or deletions, must be recorded.

C. For FAA purposes, a property may be considered contiguous even though it is severed by a public highway, unimproved road, fence, canal, or waterway.

D. Upon withdrawal or change in use of a parcel assessed under the provisions of the FAA, the assessor shall immediately calculate the amount of the roll-back tax due and the county shall bill the roll-back tax due.

1. The amount of the lien shall be shown on the recorded roll-back statement.

2. If the roll-back tax is not paid to the county treasurer within 30 days after billing, the county treasurer shall proceed to collect the amount due.

3. If, after a period of being exempt, the property is used for a purpose that does not qualify for assessment under the FAA, the roll-back provisions of FAA shall apply to the time the property was under the provisions of the FAA, up to a maximum of five years, less the number of years that the property was exempt.

E. Land that becomes ineligible for farmland assessment solely as a result of amendments to Sections 59-2-501 through 59-2-515 is not subject to the roll-back tax if the owner of that land notifies the county assessor of the land's ineligibility for farmland assessment on or before January 1, 1994.

F. Applications for assessment and taxation under the FAA may be made only by the owner of farm property. A lessee or purchaser of any parcel may arrange with the owner to farm such land, but the lessee or purchaser may not make application for farmland assessment in the lessee's or purchaser's name.

G. A leased parcel may be assessed under the FAA if it meets all of the eligibility requirements set forth in Section 59-2-503.

H. All applications for assessment under the provisions of the FAA shall be accompanied by documentation verifying the agricultural production of the property for the two years immediately preceding the year of application. The county assessor or the commission may request any additional information needed to determine eligibility under Section 59-2-503.

R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Section 59-2-704.5.

A. Definitions.

1. "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

2. "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

3. "Nonparametric" means data samples that are not normally distributed.

4. "Parametric" means data samples that are normally distributed.

5. "Urban counties" means counties classified as first or second class counties pursuant to Section 17-16-13.

B. The Tax Commission adopts the following standards of assessment performance regarding assessment level and uniformity:

1. Adjustment shall be ordered for a property class or subclass if the measure of central tendency is not within 10 percent of the legal level of assessment or the 95 percent confidence interval of the measure of central tendency does not contain the legal level of assessment.

a) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

b) The adjustment shall be calculated by dividing the legal level of assessment by the measure of central tendency when uniformity meets the standards in B.2., or by the 95 percent confidence interval limit nearest the legal level of assessment

when the standards in B.2. are not met.

2. Corrective action for the property being appraised under the cyclical appraisal plan for a given year shall be ordered if the measure of dispersion is outside the following limits for the coefficient of dispersion (COD), or for the coefficient of variation (COV) when data are normally distributed:

a) In urban counties, the limit for the COD is 15 percent or less for primary residential and commercial property, and 20 percent or less for vacant land and secondary residential property.

b) In rural counties, the limit for the COD is 20 percent or less for primary residential and commercial property, and 25 percent or less for vacant land and secondary residential property.

c) The limit for the COV is 1.25 times the COD.

d) Corrective action may contain language requiring a county to create or follow its cyclical appraisal plan.

e) If the sample size does not meet the requirements of B.3., or if there is reason to question the reliability of statistical data achieved under B.3., an alternate performance evaluation shall be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

(1) the county's procedures for use and collection of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

(2) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

(3) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties;

(4) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

3. To achieve statistical accuracy in determining assessment level under B.1. and uniformity under B.2. for any property class or subclass, the acceptable sample size shall consist of 10 or more ratios.

a) To meet the minimum sample size, the study period may be extended.

b) A smaller sample size may be used if that sample size is at least 10 percent of the class or subclass population.

c) All input to the sample used to measure performance shall be completed by September first of each study cycle.

R884-24P-28. Reporting Requirements For Leased or Rented Personal Property, Pursuant to Utah Code Ann. Section 59-2-306.

A. The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

1. On forms or diskette provided by the Tax Commission, the owner of leased or rented heavy equipment shall file semi-annual reports with the Tax Commission for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

a) a description of the leased or rented equipment;

b) the year of manufacture and acquistion cost;

c) a listing, by month, of the counties where the equipment has situs; and

d) any other information required.

2. For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

3. The completed report shall be submitted to the Property Tax Division of the Tax Commission within thirty days after each reporting period.

a) Noncompliance will require accelerated reporting.

R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.

A. Household furnishings, furniture, and equipment are subject to property taxation if:

1. the owner of the abode commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

2. the abode is held out as available for the rent, lease, or use by others.

R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.

A. Leasehold improvements under the control of the lessee shall be taxed as personal property of the lessee.

B. If not taxed as personal property of the lessee, the value of leasehold improvements shall be included in the value of the real property.

R884-24P-33. 1999 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

A. Definitions.

1. "Acquisition cost" means all costs required to put an item into service, including purchase price, freight and shipping costs; installation, engineering, erection or assembly costs; and excise and sales taxes.

a) Indirect costs such as debugging, licensing fees and permits, insurance or security are not included in the acquisition cost.

b) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

2. "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

a) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

3. "Cost new" means the manufacturer's suggested retail price or the actual cost of the property when purchased new. For property purchased used the cost new may be estimated by the taxing authority.

4. "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

a) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the

property.

b) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, and vehicle valuation guides such as NADA.

B. Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

1. Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

2. A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

3. County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

4. The assessor and the Commission may rely on other publications listing costs new or market values when valuing motor vehicles not found in the source guide recommended by the Commission.

C. Other taxable personal property that is not included in the listed classes includes:

1. Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

2. Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

3. Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

D. Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

E. All taxable personal property is classified by expected economic life as follows:

1. Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

a) Examples of property in the class include:

(1) barricades/warning signs;
(2) library materials;
(3) patterns, jigs and dies;
(4) pots, pans, and utensils;
(5) canned computer software;
(6) hotel linen;
(7) wood and pallets; and
(8) video tapes.

b) With the exception of video tapes, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

c) Video tapes are valued at $15.00 per tape for the first year and $3.00 per tape thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
98	70%
97	40%
96 and prior	10%

2. Class 2 - Computer Dependent Machinery.

a) Machinery shall be classified as computer dependent machinery if all of the following conditions are met:

(1) The equipment is sold as a single unit. If the invoice(s) break out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(2) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(3) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(4) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(5) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
98	87%
97	72%
96	60%
95	53%
94	46%
93	37%
92	27%
91 and prior	17%

3. Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

a) Examples of property in this class include:

(1) office machines;
(2) alarm systems;
(3) shopping carts;
(4) ATM machines;
(5) small equipment rentals;
(6) property subject to a rent-to-own agreement;
(7) telephone equipment and systems;
(8) music systems;
(9) vending machines; and
(10) video game machines.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
98	83%
97	67%

96	51%
95	35%
94 and prior	18%

4. Class 4 - Service Equipment. Class 4 property is used by service industries and is subject to a high degree of functional obsolescence.

a) Examples of property in this class include:

(1) service station equipment;

(2) car wash equipment;

(3) bulk and holding tanks;

(4) tire and wheel service equipment;

(5) dry cleaning machines;

(6) mechanical and electrical signs;

(7) clothes washers and dryers;

(8) tanks; and

(9) pumps.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 4

Year of Acquisition	Percent Good of Acquisition Cost
98	88%
97	79%
96	68%
95	58%
94	48%
93	37%
92	25%
91 and prior	13%

5. Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

a) Examples of property in this class include:

(1) furniture;

(2) bars and sinks:

(3) booths, tables and chairs;

(4) beauty and barber shop fixtures;

(5) cabinets and shelves;

(6) displays, cases and racks;

(7) office furniture;

(8) theater seats; and

(9) water slides.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
98	90%
97	81%
96	72%
95	63%
94	54%
93	45%
92	34%
91	23%
90 and prior	12%

6. Class 6 - Heavy and Medium Duty Trucks.

a) Examples of property in this class include:

(1) heavy duty trucks; and

(2) medium duty trucks.

b) Taxable value is calculated by applying the percent good factor against the actual cost of the property when purchased new or 75 percent of the manufacturer's suggested retail price. The taxable value for vehicles purchased used will be determined by applying the percent good factor to the value determined by the assessing authority. For state assessed vehicles, the value of attached equipment will be included in the total vehicle valuation.

c) The 1999 percent good applies to 1999 models purchased in 1998.

d) Trucks weighing two tons or more have a minimum value of $1,750 and a minimum tax of $26.25.

TABLE 6

Year of Model	Percent Good of Cost New
99	90%
98	68%
97	63%
96	58%
95	53%
94	49%
93	44%
92	39%
91	34%
90	30%
89	25%
88	20%
87	15%
86 and prior	10%

7. Class 7 - Medical and Dental Equipment. Class 7 property is subject to a high degree of technological development by the health industry.

a) Examples of property in this class include:

(1) medical and dental equipment and instruments;

(2) exam tables and chairs;

(3) high-tech hospital equipment;

(4) microscopes; and

(5) optical equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 7

Year of Acquisition	Percent Good of Acquisition Cost
98	91%
97	84%
96	77%
95	70%
94	64%
93	56%
92	47%
91	38%
90	29%
89	20%
88 and prior	10%

8. Class 8 - Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

a) Examples of property in this class include:

(1) manufacturing machinery;

(2) amusement rides;

(3) bakery equipment;
(4) distillery equipment;
(5) refrigeration equipment;
(6) nonpetroleum drill rigs;
(7) machine shop equipment;
(8) processing equipment;
(9) leased farm equipment;
(10) mining equipment;
(11) ski lift machinery;
(12) printing equipment; and
(13) bottling or cannery equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
98	91%
97	84%
96	77%
95	70%
94	64%
93	56%
92	47%
91	38%
90	29%
89	20%
88 and prior	10%

9. Class 9 - Off-Highway Vehicles.

a) Examples of property in this class include:
(1) dirt and trail motorcycles;
(2) all terrain vehicles;
(3) golf carts; and
(4) snowmobiles.

b) Taxable value is calculated by applying the percent good factor against the cost new or suggested list price from the January-April NADA Motorcycle/Snowmobile/ATV Appraisal Guide.

c) The 1999 percent good applies to 1999 models purchased in 1998.

d) Off-Highway Vehicles have a minimum value of $500 and a minimum tax of $7.50.

TABLE 9

Year of Model	Percent Good of Cost New
99	90%
98	61%
97	58%
96	55%
95	52%
94	49%
93	45%
92	42%
91	39%
90	36%
89	33%
88	30%
87	27%
86 and prior	23%

10. Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.

a) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
98	93%
97	88%
96	82%
95	77%
94	73%
93	67%
92	60%
91	53%
90	46%
89	40%
88	33%
87	26%
86	18%
85 and prior	10%

11. Class 11 - Street Motorcycles.

a) Examples of property in this class include:
(1) street motorcycles;
(2) scooters; and
(3) mopeds.

b) Taxable value is calculated by applying the percent good factor against the original cost new or the suggested list price from the January-April edition of the NADA Motorcycle/Snowmobile/ATV Appraisal Guide.

c) The 1999 percent good applies to 1999 models purchased in 1998.

d) Street motorcycles have a minimum value of $500 and a minimum tax of $7.50.

TABLE 11

Year of Model	Percent Good of Cost New
99	90%
98	72%
97	69%
96	67%
95	64%
94	61%
93	59%
92	56%
91	53%
90	50%
89	48%
88	45%
87	42%
86	40%
85	37%
84	34%
83 and prior	31%

12. Class 12 - Computer Hardware.

a) Examples of property in this class include:
(1) data processing equipment;
(2) personal computers;
(3) main frame computers;
(4) computer equipment peripherals; and
(5) cad/cam systems.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

Year of Model	Percent Good of Acquisition Cost
98	85%
97	57%
96	36%
95	23%
94	14%
93 and prior	9%

13. Class 13 - Heavy Equipment.

a) Examples of property in this class include:

(1) construction equipment;

(2) excavation equipment;

(3) loaders;

(4) batch plants;

(5) snow cats; and

(6) power sweepers.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

c) 1999 model equipment purchased in 1998 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
98	64%
97	61%
96	57%
95	54%
94	51%
93	48%
92	44%
91	41%
90	38%
89	35%
88	31%
87	28%
86	25%
85 and prior	22%

14. Class 14 - Motor Homes.

a) Taxable value is calculated by applying the percent good against the cost new derived from the January-April edition of the NADA Recreational Vehicle Appraisal Guide.

b) The 1999 percent good applies to 1999 models purchased in 1998.

TABLE 14

Year of Model	Percent Good of Cost New
99	90%
98	72%
97	69%
96	65%
95	62%
94	58%
93	54%
92	51%
91	47%
90	44%
89	40%
88	37%
87	33%
86	30%
85	26%
84	22%
83 and prior	19%

15. Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products.

a) Examples of property in this class include:

(1) crystal growing equipment;

(2) die assembly equipment;

(3) wire bonding equipment;

(4) encapsulation equipment;

(5) semiconductor test equipment;

(6) clean room equipment;

(7) chemical and gas systems related to semiconductor manufacturing;

(8) deionized water systems;

(9) electrical systems; and

(10) photo mask and wafer manufacturing dedicated to semiconductor production.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
98	74%
97	54%
96	38%
95	24%
94 and prior	10%

16. Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

a) Examples of property in this class include:

(1) billboards;

(2) sign towers;

(3) radio towers;

(4) ski lift and tram towers;

(5) non-farm grain elevators; and

(6) bulk storage tanks.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
98	95%
97	91%
96	87%
95	84%
94	82%
93	78%
92	74%
91	68%
90	64%
89	60%
88	57%
87	52%
86	47%
85	40%
84	34%
83	28%
82	21%
81	15%
80 and prior	8%

17. Class 17 - Boats.

a) Examples of property in this class include:
(1) boats;
(2) boat motors; and
(3) personal watercraft.

b) Taxable value is calculated by applying the percent good factor against the original cost new or the F.O.B. or P.O.E. price from the ABOS Marine Blue Book.

c) The 1999 percent good applies to 1999 models purchased in 1998.

d) Boats have a minimum value of $500 and a minimum tax of $7.50.

TABLE 17

Year of Model	Percent Good of Cost New
99	90%
98	69%
97	67%
96	64%
95	62%
94	60%
93	57%
92	55%
91	53%
90	50%
89	48%
88	46%
87	43%
86	41%
85	39%
84	36%
83	34%
82	31%
81	29%
80	27%
79 and prior	24%

18. Class 18 - Travel Trailers/Truck Campers.

a) Examples of property in this class include:
(1) travel trailers;
(2) truck campers; and
(3) tent trailers.

b) Taxable value is calculated by applying the percent good factor against the original cost new or, for travel trailers, from the January-April edition of the NADA Recreational Vehicle Appraisal Guide.

c) The 1999 percent good applies to 1999 models purchased in 1998.

d) Trailers and truck campers have a minimum value of $500 and a minimum tax of $7.50.

TABLE 18

Year of Model	Percent Good of Cost New
99	90%
98	69%
97	66%
96	63%
95	59%
94	56%
93	52%
92	49%
91	45%
90	42%
89	39%
88	35%
87	32%
86	28%
85	25%
84	21%
83 and prior	18%

20. Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

a) Examples of property in this class include:
(1) oil and gas exploration equipment;
(2) distillation equipment;
(3) wellhead assemblies;
(4) holding and storage facilities;
(5) drill rigs;
(6) reinjection equipment;
(7) metering devices;
(8) cracking equipment;
(9) well-site generators, transformers, and power lines;
(10) equipment sheds;
(11) pumps;
(12) radio telemetry units; and
(13) support and control equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
98	92%
97	87%
96	81%
95	76%
94	70%
93	63%
92	56%
91	48%
90	41%
89	34%
88	27%
87	18%
86 and prior	9%

21. Class 21 - Commercial and Utility Trailers.

a) Examples of property in this class include:
(1) commercial trailers;
(2) utility trailers;
(3) cargo utility trailers;
(4) boat trailers;
(5) converter gears;
(6) horse and stock trailers; and
(7) all trailers not included in Class 18.

b) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, the value of attached equipment will be included in the total vehicle valuation.

c) The 1999 percent good applies to 1999 models purchased in 1998.

d) Commercial and utility trailers have a minimum value of $500 and a minimum tax of $7.50.

TABLE 21

Year of Model	Percent Good of Cost New

99	95%
98	75%
97	71%
96	67%
95	63%
94	60%
93	56%
92	52%
91	48%
90	44%
89	40%
88	36%
87	32%
86	28%
85	24%
84	20%
83 and prior	16%

22. Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

a) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

b) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary for this class.

23. Class 23 - Aircraft Not Listed in the Bluebook Price Digest Subject to the Uniform Tax.

a) Examples of property in this class include:

(1) kit-built aircraft;

(2) experimental aircraft;

(3) gliders;

(4) hot air balloons; and

(5) any other aircraft requiring FAA registration.

b) Aircraft subject to the uniform tax, but not listed in the Aircraft Bluebook Price Digest, are valued by applying the percent good factor against the acquisition cost of the aircraft.

c) Aircraft requiring Federal Aviation Agency registration and kept in Utah must be registered with the Motor Vehicle Division of the Tax Commission.

TABLE 23

Year of Acquisition	Percent Good of Acquisition Cost
98	75%
97	71%
96	67%
95	63%
94	59%
93	55%
92	51%
91	47%
90	43%
89	39%
88	35%
87 and prior	31%

24. Class 24 - Leasehold Improvements.

a) This class includes short life leasehold improvements to real property installed by a tenant, including:

(1) walls and partitions;

(2) plumbing and roughed-in fixtures;

(3) floor coverings other than carpet;

(4) store fronts;

(5) decoration;

(6) wiring;

(7) suspended or acoustical ceilings;

(8) heating and cooling systems; and

(9) iron or millwork trim.

b) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

c) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
98	94%
97	88%
96	82%
95	77%
94	71%
93	65%
92	59%
91	54%
90	48%
89	42%
88	36%
87 and prior	30%

F. The provision of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-34. Use of Sales or Appraisal Information Gathered in Conjunction With Assessment/Sales Ratio Studies Pursuant to Utah Code Ann. Section 59-2-704.

A. Market data gathered for purposes of an assessment/sales ratio study may be used for valuation purposes only as part of a systematic reappraisal program whereby all similar properties are given equitable and uniform treatment.

B. Sales or appraisal data gathered in conjunction with a ratio study shall not be used for an isolated reappraisal of the sold or appraised properties.

C. Information derived from ratio studies regarding the values assigned to real property and personal property shall not be used to establish the apportionment between real and personal property in future assessments.

R884-24P-35. Annual Affidavit of Exempt Use Pursuant to Utah Code Ann. Section 59-2-1101.

A. The owner of property receiving a full or partial exemption from property tax based on exclusive use for religious, charitable or educational purposes, is required to file the annual affidavit prescribed in Utah Code Ann. Section 59-2-1101.

R884-24P-36. Contents of Real Property Tax Notice Pursuant to Utah Code Ann. Section 59-2-1317.

A. In addition to the information required by Section 59-2-1317, the tax notice for real property shall specify the following:

1. the property identification number;

2. the appraised value of the property and, if applicable, any adjustment for residential exemptions expressed in terms of taxable value;

3. if applicable, tax relief for taxpayers eligible for blind, veteran, or poor abatement or the circuit breaker, which shall be shown as credits to total taxes levied; and

4. itemized tax rate information for each taxing entity and

total tax rate.

R884-24P-37. Separate Values of Land and Improvements Pursuant to Utah Code Ann. Sections 59-2-301 and 59-2-305.

A. The county assessor shall maintain an appraisal record of all real property subject to assessment by the county. The record shall include the following information:

1. owner of the property;
2. property identification number;
3. description and location of the property; and
4. full market value of the property.

B. Real property appraisal records shall show separately the value of the land and the value of any improvements.

R884-24P-38. Nonoperating Railroad Properties Pursuant to Utah Code Ann. Section 59-2-201(4).

A. Definitions.

1. "Railroad right of way" (RR-ROW) means a strip of land upon which a railroad company constructs the road bed.

a. RR-ROW within incorporated towns and cities shall consist of 50 feet on each side of the main line main track, branch line main track or main spur track. Variations to the 50-foot standard shall be approved on an individual basis.

b. RR-ROW outside incorporated towns and cities shall consist of the actual right-of-way owned if not in excess of 100 feet on each side of the center line of the main line main track, branch line main track, or main spur track. In cases where unusual conditions exist, such as mountain cuts, fills, etc., and more than 100 feet on either side of the main track is required for ROW and where small parcels of land are otherwise required for ROW purposes, the necessary additional area shall be reported as RR-ROW.

B. Assessment of nonoperating railroad properties. Railroad property formerly assessed by the unitary method which has been determined to be nonoperating, and which is not necessary to the conduct of the business, shall be assessed separately by the local county assessor. For purposes of this rule:

C. Assessment procedures.

1. Properties charged to nonoperating accounts are reviewed by the Property Tax Division, and if taxable, are assessed and placed on the local county assessment rolls separately from the operating properties.

2. RR-ROW is considered as operating and as necessary to the conduct and contributing to the income of the business. Any revenue derived from leasing of property within the RR-ROW is considered as railroad operating revenues.

3. Real property outside of the RR-ROW which is necessary to the conduct of the railroad operation is considered as part of the unitary value. Some examples are: company homes occupied by superintendents and other employees on 24-hour call, storage facilities for railroad operations, communication facilities, and spur tracks outside of RR-ROW.

4. Abandoned RR-ROW is considered as nonoperating and shall be reported as such by the railroad companies.

5. Real property outside of the RR-ROW which is not necessary to the conduct of the railroad operations is classified as nonoperating and therefore assessed by the local county assessor. Some examples are: land leased to service station operations, grocery stores, apartments, residences, and agricultural uses.

6. RR-ROW obtained by government grant or act of Congress is deemed operating property.

D. Notice of Determination. It is the responsibility of the Property Tax Division to provide a notice of determination to the owner of the railroad property and the assessor of the county where the railroad property is located immediately after such determination of operating or nonoperating status has been made. If there is no appeal to the notice of determination, the Property Tax Division shall notify the assessor of the county where the property is located so the property may be placed on the roll for local assessment.

E. Appeals. Any interested party who wishes to contest the determination of operating or nonoperating property may do so by filing a request for agency action within ten days of the notice of determination of operating or nonoperating properties. Request for agency action may be made pursuant to Utah Code Ann. Title 63, Chapter 46b.

R884-24P-40. Exemption of Parsonages, Rectories, Monasteries, Homes and Residences Pursuant to Utah Code Annotated 59-2-1101(d) and Article XIII, Section 2 of the Utah Constitution.

A. Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

1. The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

2. The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.

3. The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

B. The exemption for one person and the family of such person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.

C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.

2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

R884-24P-41. Adjustment or Deferral of Property Taxes Pursuant to Utah Code Ann. Section 59-2-1347.

A. Requested adjustments to taxes for past years may not be made under Utah Code Ann. Section 59-2-1347 if the requested adjustment is based only on property valuation.

B. Utah Code Ann. Section 59-2-1347 applies only to taxes levied but unpaid and may not serve as the basis for refunding taxes already paid.

C. Utah Code Ann. Section 59-2-1347 may only be applied to taxes levied for the five most recent tax years except where taxes levied remain unpaid as a result of administrative action or litigation.

R884-24P-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-2-508(2), and Section 59-2-705.

A. The Tax Commission is responsible for auditing the administration of the Farmland Assessment Act to verify proper listing and classification of all properties assessed under the act. The Tax Commission also conducts routine audits of personal property accounts.

1. If an audit reveals an incorrect assignment of property, or an increase or decrease in value, the county assessor shall correct the assessment on the assessment roll and the tax roll.

2. A revised assessment notice or tax notice or both shall be mailed to the taxpayer for the current year and any previous years affected.

3. The appropriate tax rate for each year shall be applied when computing taxes due for previous years.

B. Assessors shall not alter results of an audit without first submitting the changes to the Tax commission for review and approval.

C. The Tax Commission shall review assessor compliance with this rule. Noncompliance may result in an order for corrective action.

R884-24P-44. Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-1101.

A. The use of the machinery and equipment, whether by the claimant or a lessee, shall determine the exemption.

1. For purposes of this rule, the term owner includes a purchaser under an installment purchase contract or capitalized lease where ownership passes to the purchaser at the end of the contract without the exercise of an option on behalf of the purchaser or seller.

B. Farm machinery and equipment is used primarily for agricultural purposes if it is used primarily for the production or harvesting of agricultural products.

C. Machinery and equipment used for processing of agricultural products or other nonproduction activities are not exempt.

R884-24P-47. Uniform Tax on Aircraft Pursuant to Utah Code Ann. Sections 59-2-404, 59-2-1005, 59-2-1302, and 59-2-1303.

A. Registration of aircraft requires payment of a uniform tax in lieu of ad valorem personal property tax. This tax shall be collected by the county assessor at the time of registration at the rate prescribed in Section 59-2-404.

B. The average wholesale market value of the aircraft is the arithmetic mean of the average low wholesale book value and the average high wholesale book value. This average price will be used as the basis for the initial assessment. These amounts are obtained from the fall edition of the Aircraft Bluebook Price Digest in the year preceding the year of registration for all aircraft listed in that publication.

1. The average wholesale market value of aircraft subject to registration but not shown in the Aircraft Bluebook Price Digest will be assessed according to the annual depreciation schedule for aircraft valuation set forth in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules."

2. Instructions for interpretation of codes are found inside the Aircraft Bluebook Price Digest.

a) Average low wholesale values are found under the heading "Average equipped per base avg change/invtry."

b) Average high wholesale values are found under the heading "change mktbl."

c) Aircraft values not in accordance with "average" may be adjusted by the assessor following the instructions in the Bluebook. Factors that have the greatest impact on value include: high engine time, air worthiness directives not complied with, status of annual inspection, crash damage, paint condition, and interior condition.

C. The uniform tax is due each year the aircraft is registered in Utah. If the aircraft is sold within the same registration period, no additional uniform tax shall be due. However, the purchaser shall pay any delinquent tax as a condition precedent to registration.

D. If an aircraft is purchased or moved to Utah during the year and newly registered in Utah, the uniform tax shall be prorated based on the number of months remaining in the registration period.

1. Any portion of a month shall be counted as a full month. For example, if registration is required during July, 50 percent of the uniform tax shall be paid as a condition of registration.

2. If the aircraft is moved to Utah during the year, and property tax was paid to another state prior to moving the aircraft into Utah, any property tax paid shall be allowed as a credit against the prorated uniform tax due in Utah.

a) This credit may not be refunded if the other state property tax exceeds the uniform tax due in Utah for the comparable year.

b) Proof of payment shall be submitted before credit is allowed.

E. The uniform tax collected by county assessors shall be distributed to the taxing districts of the county in which the aircraft is located as shown on the registration application. If the aircraft is registered in a county other than the county of the aircraft location, the tax collected shall be forwarded to the appropriate county within five working days.

F. The Tax Commission shall supply registration forms and numbered decals to the county assessors. Forms to assess the uniform tax shall be prepared by the counties each year. The Tax Commission shall maintain an owners'data base and supply the counties with a list of registrations by county after the first year and shall also supply registration renewal forms preprinted with the prior year's registration information.

G. The aircraft owner or person or entity in possession thereof shall immediately provide access to any aircraft hangar or other storage area or facility upon request by the assessor or the assessor's designee in order to permit the determination of the status of registration of the aircraft, and the performance of any other act in furtherance of the assessor's duties.

H. The provisions applicable to securing or collecting personal property taxes set forth in Sections 59-2-1302 and 59-2-1303 shall apply to the collection of delinquent uniform taxes.

I. If the aircraft owner and the county assessor cannot reach agreement concerning the aircraft valuation, the valuation may be appealed to the county board of equalization under Section 59-2-1005.

R884-24P-49. Calculating the Utah Apportioned Value of a Private Rail Car Company Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Average market value per rail car" means the total rail car market value divided by the total number of rail cars in the rail car company's fleet.

2. "Total rail car market value" means the sum of the acquisition cost by year for rail cars purchased by the rail car company multiplied by the appropriate percent good factors contained in Class 10 of R884-24P-33, Personal Valuation Guides and Schedules, plus the sum of betterments by year depreciated on a 14-year straight line method.

3. "Total system car miles" means both loaded and empty miles accumulated during the prior calendar year by all the rail cars in the rail company's fleet.

4. "Utah car miles" mean both loaded and empty miles accumulated within Utah during the prior calendar year by all the rail cars in the rail company's fleet.

5. "Utah percent of the system factor" means the Utah car miles divided by the total system car miles.

B. The taxable value of a private rail car company apportioned to Utah, for which the Utah percent of system factor is more than 50 percent, shall be determined by multiplying the Utah percent of system factor by the total rail car market value.

C. The taxable value of a private rail car company apportioned to Utah, for which the Utah percent of system factor is less than or equal to 50 percent, shall be determined in the following manner:

1. Calculate the number of rail cars allocated to Utah under the percent of system factor.

a) Multiply the Utah percent of system factor by the total number of in-service rail cars in the company's fleet.

b) Multiply the product obtained in C.1.a) by 50 percent.

2. Calculate the number of rail cars allocated to Utah under the time speed factor.

a) Divide Utah car miles by the average rail car miles traveled in Utah per year. The Commission has determined that the average rail car miles traveled in Utah per year shall equal 200,000 miles.

b) Multiply the quotient obtained in C.2.a) by the percent of in-service rail cars in the company's fleet.

c) Multiply the product obtained in C.2.b) by 50 percent.

3. Add the number of rail cars allocated to Utah under the percent of system factor, calculated in C.1.b), and the number of rail cars allocated to Utah under the time speed factor, calculated in C.2.c), and multiply that sum by the average market value per rail car.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1997.

R884-24P-50. Apportioning the Utah Proportion of Commercial Aircraft Valuations Pursuant to Utah Code Ann. Subsection 59-2-201(1)(c) and Section 59-2-801.

A. Definitions.

1. "Commercial air carrier" means any air charter service, air contract service or airline as defined by Section 59-2-102.

2. "Mobile flight equipment" means the airframes, engines, and other personal property owned or operated by a commercial air carrier that are capable of flight or used as part of an aircraft capable of flight. Engines or spare parts that are not currently attached to an airframe or otherwise part of an aircraft are not part of the mobile flight equipment.

3. "Route" means the flight path, including landings and takeoffs, over the ground or water that a commercial air carrier's mobile flight equipment typically flies as determined by the Property Tax Division.

4. "Route miles" means the lineal ground distance in statute miles along a commercial air carrier's route as determined by the Property Tax Division.

5. "Designated taxing areas" means those taxing areas within a school district other than incorporated cities or towns. If, however, a school district's boundaries coincide with the boundaries of an incorporated city or town, the incorporated city or town shall be included in the designated taxing area.

B. The commission shall apportion the Utah portion of each commercial air carrier's mobile flight equipment valuation to the appropriate designated taxing areas. A designated taxing area's apportionment is determined by the proportion of route miles in that area compared to the total route miles within the state.

C. The valuation of a commercial air carrier's other personal and real property shall be allocated to the taxing area in which it is located on January 1 of each year.

R884-24P-52. Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-103.

A. "Household" is as defined in Section 59-2-1202.

B. "Primary residence" means the location where domicile has been established.

C. Except as provided in D. and F.3., the residential exemption provided under Section 59-2- 103 is limited to one primary residence per household.

D. An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.

E. Factors or objective evidence determinative of domicile include:

1. whether or not the individual voted in the place he claims to be domiciled;

2. the length of any continuous residency in the location claimed as domicile;

3. the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed

to any other location;

4. the presence of family members in a given location;

5. the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;

6. the physical location of the individual's place of business or sources of income;

7. the use of local bank facilities or foreign bank institutions;

8. the location of registration of vehicles, boats, and RVs;

9. membership in clubs, churches, and other social organizations;

10. the addresses used by the individual on such things as:

a) telephone listings;

b) mail;

c) state and federal tax returns;

d) listings in official government publications or other correspondence;

e) driver's license;

f) voter registration; and

g) tax rolls;

11. location of public schools attended by the individual or the individual's dependents;

12. the nature and payment of taxes in other states;

13. declarations of the individual:

a) communicated to third parties;

b) contained in deeds;

c) contained in insurance policies;

d) contained in wills;

e) contained in letters;

f) contained in registers;

g) contained in mortgages; and

h) contained in leases.

14. the exercise of civil or political rights in a given location;

15. any failure to obtain permits and licenses normally required of a resident;

16. the purchase of a burial plot in a particular location;

17. the acquisition of a new residence in a different location.

F. Administration of the Residential Exemption.

1. Except as provided in F.2. and F.4., the first one acre of land per residential unit shall receive the residential exemption.

2. If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.

3. If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.

4. A property assessed under the Farmland Assessment Act shall receive the residential exemption only for the homesite.

5. A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.

6. If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

R884-24P-53. 1999 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

A. Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

1. The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

2. Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

3. County assessors may not deviate from the schedules.

B. All property defined as farmland pursuant to Section 59-2-501 shall be assessed on a per acre basis as follows:

1. Irrigated farmland shall be assessed under the following classifications.

a) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
Irrigated I

1)	Box Elder	700
2)	Cache	625
3)	Carbon	550
4)	Davis	725
5)	Emery	450
6)	Iron	675
7)	Kane	400
8)	Millard	700
9)	Salt Lake	650
10)	Utah	650
11)	Washington	650
12)	Weber	725

(Note: Some counties do not have Irrigated I property.)

b) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

1)	Box Elder	600
2)	Cache	525
3)	Carbon	450
4)	Davis	625
5)	Duchesne	475
6)	Emery	350
7)	Grand	375
8)	Iron	575
9)	Juab	425
10)	Kane	300
11)	Millard	600
12)	Salt Lake	500
13)	Sanpete	475
14)	Sevier	525
15)	Summit	450
16)	Tooele	425
17)	Utah	550
18)	Wasatch	450
19)	Washington	550
20)	Weber	625

(Note: Some counties do not have Irrigated II property.)

c) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed

below:

TABLE 3
Irrigated III

1)	Beaver	425
2)	Box Elder	450
3)	Cache	375
4)	Carbon	300
5)	Davis	475
6)	Duchesne	325
7)	Emery	200
8)	Garfield	150
9)	Grand	225
10)	Iron	425
11)	Juab	275
12)	Kane	150
13)	Millard	450
14)	Morgan	375
15)	Piute	350
16)	Rich	225
17)	Salt Lake	350
18)	San Juan	175
19)	Sanpete	325
20)	Sevier	375
21)	Summit	300
22)	Tooele	400
23)	Uintah	350
24)	Utah	400
25)	Wasatch	300
26)	Washington	400
27)	Wayne	225
28)	Weber	475

(Note: Daggett County does not have Irrigated III property.)

d) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

1)	Beaver	325
2)	Box Elder	350
3)	Cache	275
4)	Carbon	200
5)	Daggett	250
6)	Davis	375
7)	Duchesne	225
8)	Emery	100
9)	Garfield	50
10)	Grand	125
11)	Iron	325
12)	Juab	175
13)	Kane	50
14)	Millard	350
15)	Morgan	275
16)	Piute	250
17)	Rich	175
18)	Salt Lake	250
19)	San Juan	75
20)	Sanpete	225
21)	Sevier	275
22)	Summit	200
23)	Tooele	150
24)	Uintah	250
25)	Utah	300
26)	Wasatch	200
27)	Washington	300
28)	Wayne	125
29)	Weber	375

2. Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

a)	Box Elder	570
b)	Cache	630
c)	Davis	620
d)	Utah	525
e)	Washington	750
f)	Weber	610
g)	All other counties	575

3. Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1)	Beaver	160
2)	Box Elder	165
3)	Cache	210
4)	Carbon	115
5)	Daggett	140
6)	Davis	210
7)	Duchesne	140
8)	Emery	115
9)	Garfield	110
10)	Grand	110
11)	Iron	160
12)	Juab	115
13)	Kane	110
14)	Millard	115
15)	Morgan	140
16)	Piute	135
17)	Rich	115
18)	Salt Lake	165
19)	Sanpete	165
20)	Sevier	165
21)	Summit	165
22)	Tooele	165
23)	Uintah	140
24)	Utah	165
25)	Wasatch	165
26)	Washington	160
27)	Wayne	135
28)	Weber	210

(San Juan county does not have any Meadow IV property.)

4. Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

a) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7
Dry III

1)	Beaver	70
2)	Box Elder	100
3)	Cache	210
4)	Carbon	75
5)	Daggett	75
6)	Davis	140
7)	Duchesne	100
8)	Emery	80
9)	Garfield	75
10)	Grand	75
11)	Iron	105
12)	Juab	110
13)	Kane	75
14)	Millard	135
15)	Morgan	195
16)	Piute	75
17)	Rich	140
18)	Salt Lake	90
19)	San Juan	55
20)	Sanpete	100
21)	Sevier	80
22)	Summit	80
23)	Tooele	100
24)	Uintah	115
25)	Utah	80
26)	Wasatch	80

27)	Washington	65
28)	Wayne	80
29)	Weber	185

b) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

1)	Beaver	35
2)	Box Elder	65
3)	Cache	175
4)	Carbon	40
5)	Daggett	40
6)	Davis	105
7)	Duchesne	65
8)	Emery	45
9)	Garfield	40
10)	Grand	40
11)	Iron	70
12)	Juab	75
13)	Kane	40
14)	Millard	100
15)	Morgan	160
16)	Piute	40
17)	Rich	105
18)	Salt Lake	55
19)	San Juan	20
20)	Sanpete	65
21)	Sevier	45
22)	Summit	45
23)	Tooele	65
24)	Uintah	80
25)	Utah	45
26)	Wasatch	45
27)	Washington	30
28)	Wayne	45
29)	Weber	150

5. Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

TABLE 9
Grazing Land

a)	Graze I	
	1) All Counties	40
b)	Graze II	
	2) All Counties	12
c)	Graze III	
	3) All Counties	8
d)	Graze IV	
	4) All Counties	4

6. Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 10
Nonproductive Land

a)	Nonproductive Land	
	1) All Counties	4

R884-24P-55. Counties to Establish Ordinance for Tax Sale Procedures Pursuant to Utah Code Ann. Section 59-2-1351.1.

A. "Collusive bidding" means any agreement or understanding reached by two or more parties that in any way alters the bids the parties would otherwise offer absent the agreement or understanding.

B. Each county shall establish a written ordinance for real property tax sale procedures.

C. The written ordinance required under B. shall be displayed in a public place and shall be available to all interested parties.

D. The tax sale ordinance shall address, as a minimum, the following issues:

1. bidder registration procedures;
2. redemption rights and procedures;
3. prohibition of collusive bidding;
4. conflict of interest prohibitions and disclosure requirements;
5. criteria for accepting or rejecting bids;
6. sale ratification procedures;
7. criteria for granting bidder preference;
8. procedures for recording tax deeds;
9. payments methods and procedures;
10. procedures for contesting bids and sales;
11. criteria for striking properties to the county;
12. procedures for disclosing properties withdrawn from the sale for reasons other than redemption; and
13. disclaimers by the county with respect to sale procedures and actions.

R884-24P-56. Assessment, Collection, and Apportionment of Property Tax on Commercial Transportation Property Pursuant to Utah Code Ann. Sections 41-1a-301, and 59-2-801.

A. For purposes of Section 59-2-801, the previous year's statewide rate shall be calculated as follows:

1. Each county's overall tax rate is multiplied by the county's percent of total lane miles of principal routes.

2. The values obtained in A.1. for each county are summed to arrive at the statewide rate.

B. The assessment of vehicles apportioned under Section 41-1a-301 shall be apportioned at the same percentage ratio that has been filed with the Customer Service Division of the State Tax Commission for determining the proration of registration fees.

C. For purposes of Section 59-2-801(3)

"Principal route:" means lane miles of interstate highways and clover leafs, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Section 59-2-1328.

A. A judgment levy imposed on or after January 1, 1997, is exempt from the requirements of Sections 59-2-918 and 59-2-919, regardless of when the judgment underlying that levy was entered.

R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:

1. sharedown of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;
2. time series models, weighted 40 percent; and

3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and

2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. mobile and manufactured homes;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-401.5, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the current calendar year.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is not applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Sections 41-1a-202, 59-2-104,

59-2-401, 59-2-402, and 59-2-405.

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2-405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2-217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that

county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is not applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-62. Valuation of State Assessed Utility and Transportation Properties Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions:

1. "Attributes" of property include all defining characteristics inseparable from real property and tangible personal property, such as size, location and other attributes inherent in the property itself.

2. "Cost regulated utility" means any public utility assessable by the Commission pursuant to Section 59-2-201, whose allowed rates are determined by a state or federal regulatory commission by reference to a rate of return applied to rate base where the rate of return and rate base are set by the regulatory body.

3. "Depreciation" is the loss in value from any cause. There are two distinct types of depreciation encountered in the appraisal of properties subject to this rule: accounting depreciation and appraisal depreciation. Accounting depreciation is often called "book depreciation" and is generally calculated in accordance with generally accepted accounting principles or regulatory guidelines. Appraisal depreciation is the total loss in property value from any cause. There are three recognized types of appraisal depreciation: physical deterioration, functional obsolescence and external obsolescence. Physical deterioration is the physical wearing out of the property evidenced by wear and tear, decay and structural defects. Physical deterioration includes the loss in value due to normal aging. Functional obsolescence is the loss in value due to functional deficiencies or inadequacies within the property depicted as the inability of the property to perform adequately the functions for which it was originally designed. External (economic) obsolescence is the loss in value from causes outside the boundaries of the property and is generally incurable. Appraisal depreciation is often called "accrued depreciation."

4. "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

5. "Property" means property that is subject to assessment and taxation according to its value but does not include intangible property. Intangible property is property that is capable of private ownership separate from tangible property and includes moneys, credits, bonds, stocks, representative property, franchises, licenses, trade names, copyrights, and patents.

6. "Property which operates as a unit" or "unitary property" means property that is functionally or physically integrated in operation and construction and functions as an economic unit or "one thing."

7. "Rate Base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

8. "State Assessed Utility and Transportation Properties" include all property which operates as a unit across county lines, if the values must be apportioned among more than one county or state; all operating property of an airline, air charter service, and air contract service; and all property of public utilities as defined in Utah Code Ann. Section 59-2-102(21). For property tax valuation purposes, these properties may generally be classified as telecommunication properties, energy properties, and transportation properties, some of which may be cost regulated utilities.

a. "Telecommunication properties" means all telephone properties and other similar type properties that operate as a unit across county lines and are assessable by the Commission pursuant to Section 59-2-201.

b. "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations and other similar type entities and are assessable by the Commission pursuant to Section 59-2-201.

c. "Transportation properties" means all airline, air charter service, air contract service, railroad, and other similar type properties that operate as a unit across county lines and are assessable by the Commission pursuant to Section 59-2-201.

B. General Valuation Principles. State assessed utility and transportation properties shall be assessed at fair market value for property tax purposes based on generally accepted appraisal theory and the provisions of this rule.

1. Taxable Property and Unit Methodologies. All property, as defined in this rule, is subject to assessment, and if the property operates together as a unit, the assemblage or enhanced value attributable to the taxable property operating together should be included in the assessed value.

a. The preferred methods to determine the fair market value for all state assessed utility and transportation property are a cost indicator and a yield capitalization income indicator.

b. Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary in order to more accurately estimate the fair market value, which includes assemblage or enhanced value, of properties that operate together as a unit.

c. The direct capitalization income method and the stock and debt market method may tend to capture the value of intangible property, as defined in this rule, at higher levels than other methods. Accordingly, the value attributable to such intangible property must be identified and removed from value. To the extent such intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the correlation process, as set forth in Section B.5.

d. No final estimate of value will be imposed or considered unless the weighting percentages of the various value indicators used to correlate the final estimate of value are

disclosed in writing. Disclosure of the weighting percentages also includes a written explanation describing why a party weighted the particular indicators of value by the percentages so indicated.

e. A party may challenge a final estimate of value by proposing a different valuation methodology or weighting formula that establishes a more accurate final estimate of value. A challenge to a final estimate of value will be considered effective only if the proposed valuation methodology or weighting formula demonstrates, by a preponderance of the evidence, that it establishes a more accurate estimate of fair market value.

2. Cost Indicator. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. Generally a cost indicator may be developed under one or more of the following approaches; replacement cost new less depreciation ("RCNLD"), reproduction cost less depreciation ("Reproduction Cost"), and historic cost less depreciation ("HCLD").

a. RCNLD. Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout.

b. Reproduction Cost. Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying all the deficiencies, superadequacies, and obsolescence of the subject property. Reproduction cost shall be adjusted for appropriate depreciation.

c. HCLD. The HCLD approach is the historic cost less depreciation, which may, depending upon the industry, be trended to current costs. Only trending indexes commonly recognized by the industry may be used as a trending adjustment to HCLD.

d. In the mass appraisal environment for state assessed utility and transportation property, RCNLD is impractical to implement. The preferred cost indicator of value is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value. A challenge to the use of HCLD as the cost indicator of value will be considered effective only if the proposed cost indicator of value demonstrates, by a preponderance of the evidence, that it establishes a more accurate cost estimate of value.

3. Income Indicator. An income indicator recognizes that value is created by the expectation of future benefits to be derived from the property.

a. Yield Capitalization Approach. This income indicator shall be determined by converting future cash flows to present value as of the lien date by capitalizing future estimated cash flows at an appropriate discount rate. The yield capitalization formula is CF/(k-g), where "CF" is cash flow, "k" is the nominal, risk adjusted discount rate, and "g" is the expected future growth of the cash flow in the numerator. Each of these terms is defined below. A discounted cash flow method in which (i) individual years' cash flow are projected, (ii) the formula CF/(k-g) is used to compute terminal value, and (iii) the projected cash flows and terminal value are discounted back to present value; may be used as a substitute income valuation approach for the above yield capitalization approach when the use of a single representative annual cash flow is clearly inappropriate.

(1) Cash Flow ("CF"). Cash flow is restricted to cash flows provided by the operating assets in existence on the lien date, together with any replacements intended to maintain, and not expand or modify, the existing capacity or function thereof. Cash flow is calculated as net operating income (NOI) plus noncash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to net working capital necessary to achieve the expected growth "g". The cash flows should reflect the cash flows available to pay sources of financing for the assets in existence on the lien date or an equivalent pool of assets. The capital expenditures should include only those expenditures necessary to replace or maintain existing plant and should not include any expenditures intended for expansion or productivity and capacity enhancements. If a taxpayer is unable to separate replacement capital expenditures from expansion capital expenditures, the taxpayer must provide the Property Tax Division sufficient data to adjust the "g" in the yield capitalization formula appropriately. If the taxpayer is unable to provide data to adjust the "g", the Property Tax Division will estimate an adjustment to cash flows or "g" based on the best information available. Information necessary for the Property Tax Division to calculate the appropriate cash flow shall be summarized and submitted to the Property Tax Division by March 1 on a form provided by the Property Tax Division. The calculation of Cash Flow may be illustrated by the following formula:

CF = NOI + Noncash Charges - Replacement Capital Expenditures - Additions to Net Working Capital

(a) Cash flow is the projected cash flow for the next year and may be estimated by reviewing the last five years' cash flows, forecasting future cash flows, or a combination of both.

(b) If cash flows for a subsidiary company are not available or are not allocated between subsidiary companies on the parent company's cash flow statements, then a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. Whichever criterion is chosen, the subsidiary's total is divided by the parent's total to produce a percentage that is applied to the parent's total cash flow to estimate the subsidiary's cash flow.

(c) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, Property Tax Division may estimate cash flow using the best information available.

(2) Discount Rate ("k"). The discount rate shall be based upon a weighted average cost of capital considering current market debt rates and equity yields determined by recognized market measurements such as capital asset pricing model ("CAPM"), Risk Premium, Dividend Growth models, or other recognized models. The weighting of debt and equity should reflect the market value weightings of comparable companies in the industry.

(a) Cost of Debt. The cost of debt should reflect the current market (yield to maturity) of debt with the same credit

rating as the subject company.

(b) Cost of Equity. In the discount rate, the CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 75% in the correlation.

(c) CAPM. The CAPM formula is k(e) = R(f) + (Beta x Risk Premium), where k(e) is the cost of equity and R(f) is the risk free rate.

(i) Risk Free Rate ("R(f)"). The risk free rate shall be the current market rate on 20 year Treasury bonds.

(ii) Beta. The beta should reflect an average or value-weighted average of comparable companies. The beta of the comparable companies should be drawn from Value Line or a comparable source. Once a source is chosen, beta should be drawn consistently from this source. However, the beta of the specific assessed property should also be considered.

(iii) Risk Premium. The risk premium shall be obtained from the current Ibbotson Associates study. The risk premium shall be the arithmetic average of the spread between the return on stocks and long term bonds for the most recent 40 years.

(3) Growth Rate ("g"). The growth rate "g" is the expected future growth of the cash flow in the numerator of the formula given in CF/(k-g). If insufficient information is available to the Property Tax Division, either from public sources or from the taxpayer, to determine an appropriate "g", then "g" will be the expected inflationary rate as given by the Gross Domestic Product Price Deflator obtained in Value Line. The inflationary rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

b. Direct Capitalization Approach. This is an income approach that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by an appropriate income capitalization rate or by multiplying the normalized income estimate by an appropriate factor.

4. Market Indicator. The market value of property is directly related to the prices of comparable, competitive properties; or the sale of the specific assessed property when such information is available. The market or sales comparison approach is estimated by comparing the subject property to similar properties that have recently sold. Because sales of state assessed utility and transportation properties are infrequent, the stock and debt approach may be used as a surrogate to the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liability plus shareholder's equity.

5. Correlation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, and quality or reliability of data and the strength and weaknesses of each value indicator. The percentage weight assigned to each indicator in the correlation process shall be established, disclosed and explained as set forth in Section B.1.

6. Non-operating property. Property that is not necessary to the operation of the state assessed utility or transportation properties and is assessed by the local county assessor, and property separately assessed by the Property Tax Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

7. Leased property. All tangible operating property owned, leased, or used by state assessed utilities and transportation companies is subject to assessment.

8. Property Specific Considerations. The Commission recognizes that because of unique differences between certain types of properties and industries, modifications or alternatives to these general cost and yield income indicators, as set forth in Sections C., D., and E., may be required for the following industries: (a) cost regulated utilities, (b) telecommunications properties, and (c) transportation properties.

C. Cost regulated utilities:

1. Cost Indicator. The HCLD approach is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. The HCLD approach is calculated by taking the historic cost less deprecation as reflected in the state assessed utility's net plant accounts, and by then (1) subtracting intangible property, (2) subtracting any items not included in the state assessed utility's rate base (e.g., deferred federal income taxes ("DFIT") and, if appropriate, acquisition adjustments), and (3) adding any taxable items not included in the state assessed utility's net plant account or in rate base.

a. Deferred Federal Income Taxes. DFIT is an accounting entry that reflects a timing difference for reporting income and expenses. Accumulated DFIT reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude DFIT from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by DFIT for rate base regulated companies, DFIT may be removed from HCLD as a surrogate measure for economic obsolescence.

b. DFIT can be a surrogate measure for economic obsolescence. If a study is prepared that authenticates actual economic obsolescence and is approved by the Commission, the amount of the actual economic obsolescence will be subtracted from HCLD to develop the cost indicator of value.

2. Income indicator. The yield capitalization approach set forth in Section B.3. is the preferred method to derive the income indicator of value.

D. Telecommunications Companies:

1. Cost Indicator. This includes the operating property of local exchange carriers, local access providers. long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers. The HCLD approach set forth in Section B.2. is the preferred method to derive the cost indicator of value.

2. Income Indicator. The yield capitalization approach set forth in Section B.3. is the preferred method to derive the income indicator of value.

E. Transportation Properties. These include the operating property of long haul and short line railroads, commercial airlines, including major and small passenger carriers and major and small air freighters.

1. Railroads.

a. Cost Indicator. The Railroad industry is not rate base regulated and does not typically have a majority of its investment in property of recent vintage. Accordingly, for

Railroads, the cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value. Cost valuation should be based on trended historical costs less depreciation. Additions should be made for material and supplies and operating leased equipment. Deductions should be made for all capitalized intangible property such as customized computer software. All forms of depreciation should be measured and appropriately deducted.

b. Income Indicator. The yield capitalization approach set forth in Section B.3. is the preferred method to derive the income indicator of value.

2. Commercial airlines, including major and small passenger carriers and major and small air freighters.

a. Cost Indicator. The trended HCLD approach set forth in Section B.2. is the preferred method to derive the cost indicator of value.

b. Income Indicator. The yield capitalization approach set forth in Section B.3. is the preferred method to derive the income indicator of value.

F. This rule shall have an effective date of January 1, 1999.

R884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

a) procedures the contracting party will follow to minimize the time a customer waits in line; and

b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

KEY: taxation, personal property, property tax, appraisal
March 16, 1999 **Art. XIII, Sec 2**
Notice of Continuation May 8, 1997 **9-2-201**
11-13-25
41-1a-202
41-1a-301
59-1-1
59-1-210
59-2-13
59-2-102
59-2-103
59-2-104
59-2-201
59-2-210
59-2-211
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59-2-301
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59-2-303
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59-2-306
59-2-401
59-2-402
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59-2-406
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59-2-701
59-2-702
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59-2-704
59-2-705
59-2-801
59-2-918 through 59-2-924
59-2-1002
59-2-1005
59-2-1101
59-2-1107 through 59-2-1109
59-2-1113
59-2-1202
59-2-1202(5)
59-2-1302
59-2-1303
59-2-1328
59-2-1317
59-2-1347
59-2-1351
59-3-1
59-5-1
59-5-501 through 59-5-515
63-18A-1 through 63-18A-6

R909. Transportation, Motor Carrier.
R909-1. Safety Regulations for Motor Carriers.
R909-1-1. Adoption of Federal Regulations.

A. Safety Regulations for Motor Carriers, 49 CFR Parts 350 through 399, as contained in the October 1, 1998 edition as printed by the Regulations Management Corporation Service, is incorporated by reference, except for Parts 391.11(b)(1), 395.1(l), 395.1(m), 395.1(n) and 395.1(o). These requirements apply to all motor carrier(s) as defined in 49 CFR Part 390.5 and UCA 72-9-102(4) engaged in Commerce.

B. In the instance of a driver who is used primarily in the transportation of construction materials and equipment, as defined under 395.2, to and from an active construction site, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 36 or more successive hours.

C. Exceptions to Part 391.41, Physical Qualification may be granted under the rules of Department of Public Safety, Driver's License Division, UCA 53-3-303.5 for intrastate drivers under R708-34,

D. Drivers involved wholly in intrastate commerce shall be at least 18 years old; unless transporting placarded amounts of hazardous materials; or 16 or more passengers including the driver.

E. Drivers in involved in interstate commerce shall be at least 21 years old.

KEY: trucks, transportation safety

March 15, 1999	**72-9-103**
Notice of Continuation March 31, 1997	**72-9-104**
	54-6-9
	63-49-4

R994. Workforce Services, Workforce Information and Payment Services.

R994-600. Dislocated Workers.

R994-600-101. Authority.

(1) This rule adopts and incorporates by reference:

(a) "Job Training Partnership Act" (JTPA) 29 USC 1501 et seq.

(b) "Economic Dislocation and Worker Adjustment Assistance Act" (EDWAA) 29 USC 1621 et seq.

(c) "Worker Adjustment and Retraining Notification Act" (WARN) 29 USC 2101.

(d) Federal regulations 20 CFR parts 626, 627, 628, 629, 630, and 631, 1990; which apply to programs under the Job Training Partnership Act and the Economic Dislocation and Worker Adjustment Assistance Act.

(e) Federal regulation 20 CFR part 639, 1990; which applies to the Worker Adjustment and Retraining Notification Act.

R994-600-102. Definitions.

(1) Definitions that clarify the criteria used to verify dislocated worker status are:

(a) The term "terminated", means an individual has experienced an employment loss sometime during the 104 weeks (2 yrs) prior to issuance of the Certificate of Continuing Eligibility (CCE), and has been involuntarily separated or has received individual notice of layoff.

(b) The term "eligible for or have exhausted their entitlement to unemployment compensation" means the individual's wages would be considered in determining eligibility for unemployment compensation under federal or state unemployment insurance laws.

(c) The term "unlikely to return to their previous industry or occupation" means that the individual does not plan to return to his previous industry or occupation.

(d) The term "closure" means a closure of a plant, facility or enterprise, or an operating unit within a single site of employment.

(e) The term "substantial layoff" (for participant eligibility) means any reduction-in-force which is not the result of a plant closing and which results in an employment loss at a single site of employment during any 30-day period, which includes only those employees working more than 20 hours a week for:

(i)(A) at least 33 percent of the employees and

(B) at least 50 employees; or

(ii) at least 500 employees

(f) The term "long-term unemployed" means an individual who has been unemployed for 15 or more of the 26 weeks prior to the issuance of the CCE and was employed sometime during the 104 weeks prior to the issuance of the CCE.

(g) Other considerations may be availability of rapid response funds or team at time of layoff of closure, and the possibility of conducting rapid response workshops prior to final layoff date. "Public announcement" of a closure, for the purposes of providing rapid response assistance and basic readjustment services to eligible dislocated workers who have not received a specific notification, means any mass media notification of a planned closure made by the company that indicates a planned closure date for that company or facility.

(h) "DWS" means the Department of Workforce Services.

(i) The term "involuntarily separated" means the worker did not voluntarily leave his/her employment, involuntary also includes a person who has been fired.

R994-600-103. Certification Of Dislocated Workers.

(1) Eligibility criteria and certification requirements for dislocated workers are different from the criteria and requirements for JTPA Title II clients. The following is a list of documentation required:

(a) Proof of United States citizenship or authorization papers to work in the United States;

(b) Proof of registration with the Selective Service if applicable; and

(c) A Certificate of Continuing Eligibility.

(2) A regional area may cross-certify individuals among titles. However, a dislocated worker who refuses to submit documentation that is not required for certification under EDWAA cannot be denied EDWAA certification.

R994-600-104. Dislocated Worker Criteria.

(1) DWS will verify dislocated worker status and issue the Certificate of Continuing Eligibility (CCE) on DWS form 865.

(2) DWS shall not mandate that individuals file for unemployment compensation. However, they may use the unemployment insurance process to verify dislocated worker status when questioning a discharge for cause, voluntary departure, or retirement. This process is used only to validate the employment termination, and does not require drawing unemployment insurance benefits. Use of the unemployment insurance process to determine an employment termination will be left to the professional judgment of the certifier.

(3) To document the test for unemployment insurance a copy of the UI record or monetary eligibility wage record showing the individual worked for a covered employer must be in the file.

(4) DWS may provide a displaced homemaker with a Certificate of Continuing Eligibility. Therefore, regional areas must be aware of and verify the criteria used to identify an individual as a dislocated worker. This will prevent inappropriately enrolling an individual in EDWAA before the regional area has received approval to enroll displaced homemakers.

(5) A regional area that is not expending its funds may get approval from DWS to serve displaced homemakers if they can demonstrate that such services would not adversely affect services to eligible dislocated workers. Approval must be granted before serving displaced homemakers. Serving displaced homemakers will jeopardize the state's opportunity to receive Department Of Labor National Reserve grants.

(6) If a regional area receives approval to serve displaced homemakers with EDWAA funds, the following will apply:

(a) The individual is a homemaker for a period of two or more years without significant gainful employment outside the home, and whose primary occupation during that period of time was the provision of unpaid household services for family members.

(b) The individual has found it necessary to enter the job market, but is not reasonably capable of obtaining employment

sufficient to provide self-support or necessary support for dependents, due to lack of marketable job skills or other skills necessary for self-sufficiency.

R994-600-105. Certificate of Continuing Eligibility (CCE).

(1) A Certificate of Continuing Eligibility will be issued by DWS to those individuals who are identified as dislocated workers using one of the terms below:

(a) Unlikely to return to previous industry or occupation;

(b) Substantial layoff or plant closure;

(c) Long-term unemployed; or

(d) Self-employed.

(2) The CCE establishes the dislocation event. The regional area must determine program service eligibility separately. A CCE does not by itself indicate that services are necessary and reasonable.

(3) The Individual Readjustment Plan must reflect any facts relating to the dislocation event which occur after the CCE is issued. This includes validating grant specific eligibility for National Reserve Discretionary Grants.

(4) Except for Discretionary Grant-specific requirements, attempts to verify required information may be documented, then a CCE may be issued based on self declaration.

(5). CCE documents used to verify the dislocation event is listed in DRU-bulletin 904 which is available for review at DWS.

R994-600-106. Allotment of EDWAA Governor's Reserve 40% Funds.

(1) This section establishes the procedure used to award governor's reserve 40% funds under EDWAA.

(2) Those 40% funds not necessary for rapid response functions will be awarded to the regional areas submitting application under the following guidelines:

(a) a regional area may request 40% funds when:

(i) Workers are dislocated by a plant closing or lay off of substantial size. "Substantial size" is equal to approximately 1/2 percent of non-farm jobs in Substate Area as determined by.

(ii) All 60% EDWAA formula funds have been obligated.

(iii) An Application For 40% Funds has been completed. submitted and approved by the Direct Response Unit (DRU);

(iv) The regional area may be requested to provide any other information that might substantiate their need for these funds.

(b) The DRU will not act on requests submitted:

(i) Prior to the receipt and review of prior year close-out-packages and year end management information system information,

(ii) When a Department of Labor Secretary's National Reserve grant application is in process for those workers affected by the closing or lay off.

(c) The EDWAA Governor's 40% funds released to a regional area are subject to

(i) the regional area must have participants enrolled and funds fully obligated, according to the approved grant application, 30 days from the date of approval;

(ii) Funds that are not obligated may be recaptured at the administrative level;

(iii) An intervention plan developed as to the role, services, and facilities to be used in addressing the dislocation event;

(iv) funding emphasis will be given to eligible dislocated workers involved in plant closures or substantial layoffs who received rapid response services.

(v) Projects serving workers affected by multi-state or industry-wide dislocations and to areas of special need in manner that efficiently targets resources to areas of most need, encourages a direct response to economic dislocations, and promotes the effective use of funds;

(vi) dislocations where the company in cooperation with the DRU has formulated a labor-management/workforce reduction committee to provide assistance to impacted workers;

(vii) where an initial assessment of worker needs has been conducted during rapid response activities.

During times that additional increases of dislocation does not occur, an allocation of funds may be necessary.

R994-600-107. Criteria For Waiver Of 50% Retraining Expenditures.

(1) This subsection prescribes those criteria for the waiver of the 50% retraining requirement.

It must be demonstrated that dislocated workers will be prepared for employment in occupations or industries with long-term potential and one of the following criteria must be met:

(a) There is a need for additional basic readjustment or supportive services.

(b) There are insufficient training opportunities available within the regional area (indicating a need for more relocation or out of area job search, etc.).

(c) Other significant justification.

R994-600-108. The State Dislocated Worker Unit.

(1) The unit shall coordinate rapid response activities conducted within the regional area to ensure the services initiated by the rapid response team will continue and expand as funding allows.

(2) The unit shall develop an intervention plan with the assigned regional staff when there is a rapid response commitment for services not already included in the regionional area's plan of service. This intervention plan may also constitute a modification to the regional area's plan.

(3) Shall be notified by the regional area of any current or projected permanent closures or substantial layoffs.

KEY: training programs, employment, unemployed workers, unemployment

March 5, 1999 35A-1-104(4)

Notice of Continuation May 29, 1998 35A-4-502(1)(b)